

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF NICHOLAS G. BROOKES

23 VOLUME I, PAGES 1 - 282

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1 (The following is the deposition of
2 NICHOLAS G. BROOKES, taken pursuant to Notice of
3 Taking Deposition, at the offices of Brown, Todd &
4 Heyburn PLLC, Attorneys at Law, 3200 Providian
5 Center, Louisville, Kentucky, commencing at
6 approximately 8:30 o'clock a.m., November 5, 1997.)

7 APPEARANCES:

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24 Judge Fitzpatrick, via teleconference

25

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C O N F I D E N T I A L

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I N D E X

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EXHIBITS

DESCRIPTION

PAGE MARKED

3

Plfs'

1484 Handwritten listing of

4

corporate structure

10

5

1485 News release dated May 10,

6

1994, Bates 202337394

112

7

1486 "Comments on Nicotine," by

8

R. R. Johnson, Bates

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682012257-8

176

10

1487 Memo dated July 31, 1963,

11

Wade to Finch, Bates

12

536480910

205

13

1488 Kool 100's Mentol Filters

14

cigarette soft package

242

15

1489 Oreo cookies package

246

16

1490 "SMOKING & HEALTH ITEM 7:

17

THE EFFECT ON MARKETING,"

18

Bates 680082080-7

261

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1 P R O C E E D I N G S

2 (Witness sworn.)

3 NICHOLAS G. BROOKES

4 called as a witness, being first duly
5 sworn, was examined and testified as
6 follows:

7 ADVERSE EXAMINATION

8 BY MS. WIVELL:

9 Q. Sir, could you introduce yourself to the ladies
10 and gentlemen of the jury.

11 A. Yes. My name is Nicholas George Brookes, and
12 I'm the chairman and CEO of Brown & Williamson
13 Tobacco Corporation, Louisville, Kentucky.

14 Q. We're taking this deposition today in
15 Louisville; aren't we?

16 A. Yes, we are.

17 Q. All right. I'd like to introduce myself. My
18 name is Martha Wivell and I represent the state of
19 Minnesota and Blue Cross Blue Shield.

20 We've not met before today; have we, sir?

21 A. No, we haven't.

22 Q. All right. Now sir, you said you were the
23 chairman and CEO of Brown & Williamson; is that
24 right?

25 A. Yes, that's correct.

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1 Q. All right. Would you please let the ladies and
2 gentlemen of the jury know briefly what you do every
3 day as chairman and CEO of Brown & Williamson.

4 A. While I'm not being deposed, I suppose.

5 Q. While you're not being deposed, yes, sir.

6 A. Well I'm, as I said, the chief executive at --
7 of Brown & Williamson, and as such I suppose I'm the
8 person to whom issues need to be brought for
9 resolution on important corporate matters, conduct
10 meetings, hold discussions, make decisions.

11 Q. All right. Anything else?

12 A. Represent the company, I suppose, in -- on
13 issues such as these, perhaps, and also of course
14 interact with the shareholders of Brown & Williamson
15 as the chief executive of B&W.

16 Q. All right. Now you use the phrase "B&W." Brown
17 & Williamson is often referred to as B&W; isn't it,
18 sir?

19 A. It can be, yes.

20 Q. All right. And can we agree when we use the
21 phrase in this deposition "B&W," that we're referring
22 to a shorthand way of saying Brown & Williamson?

23 A. Certainly.

24 Q. Now you've been deposed before; haven't you,
25 sir?

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1 A. Yes, on --

2 Well in the AG cases in Florida and Texas, and
3 also in the Broin litigation.

4 Q. All right. So it would be fair to say that you
5 have been deposed three different times in three
6 different smoking-and-health-related cases; right?

7 A. On two occasions and three different times,
8 that's right, yes.

9 Q. All right. Now sir, you said that one of the
10 things you did as chief executive of B&W was to
11 interact with the shareholders; right?

12 A. That's correct.

13 Q. All right. Now Brown & Williamson is a
14 wholly-owned subsidiary; isn't it?

15 A. It is.

16 Q. In other words, if I were to go --

17 If I had a little money and I wanted to go to
18 New York and buy some shares of Brown & Williamson, I
19 wouldn't be able to; would I?

20 A. No. It's a wholly-owned subsidiary of
21 British-American Tobacco Holdings Limited.

22 Q. All right. Now ultimately it is -- its ultimate
23 parent is B.A.T Industries P.L.C.; isn't it?

24 A. That's correct, yes.

25 Q. Now would you --

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1 If I gave you a pencil and a piece of paper,
2 would you be able to draw for us the -- the hierarchy
3 with B.A.T Industries P.L.C. at the top and then the
4 corporations that stand between it and Brown &
5 Williamson?

6 A. Not off the top of my head because there are a
7 number of holding companies between each of the major
8 holding companies, and --

9 Q. All right.

10 A. -- I couldn't give you a precise corporate
11 structure now.

12 Q. Would you be willing to do the best you could?

13 A. I could give it a go, but --

14 Q. All right. I'd appreciate it if you would give
15 it a go, as you say.

16 By the way, you're from Great Britain; aren't
17 you?

18 A. Originally, yes.

19 Q. All right.

20 Let me try and get that to you. Can you get the
21 pen and paper, sir?

22 A. I've got my own pen. That's okay.

23 Q. All right. Thank you.

24 A. I believe --

25 This is being done on the basis that I'm doing

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1 the best I can. Okay? I'm not even sure that's
2 right.

3 I think that's pretty much the chain of
4 ownership. The only problem I have is knowing
5 whether there is an intermediate holding company
6 between British-American Tobacco Holdings Limited and
7 B.A.T Industries P.L.C. I think there is, and I'm
8 not quite sure what its title is, but there may not
9 be.

10 Q. All right.

11 A. Okay.

12 Q. Would you give that chart to the court reporter,
13 please.

14 A. Certainly.

15 (Plaintiffs' Exhibit 1484 was marked
16 for identification.)

17 BY MS. WIVELL:

18 Q. Sir, showing you what's been marked as
19 Plaintiffs' Exhibit 1484 --

20 Do you have it now in front of you?

21 A. Yeah.

22 Q. Exhibit 1484 is the chart that you just made for
23 us that shows the relationships -- the corporate
24 relationships that stand between B.A.T Industries
25 P.L.C. and Brown & Williamson; is that right?

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1 A. That's right.

2 I got a further question mark on this chart,

3 however, --

4 Q. All right.

5 A. -- because I wasn't entirely sure of the name of

6 the intermediate holding compny between BATUS

7 Holdings, Inc. and British-American Tobacco Holdings

8 Limited.

9 Q. All right.

10 A. But these are not trading companies, these are

11 intermediate holding companies only.

12 MS. WIVELL: I'd like to go off the record

13 and see if we can't get copies of that for people so

14 that we don't have to reach across the table, it's so

15 big. Would that be possible?

16 MR. McCORMICK: We can try.

17 MS. WIVELL: Thank you.

18 THE REPORTER: Off the record, please.

19 (Discussion off the record.)

20 BY MS. WIVELL:

21 Q. Sir, since we now have, all of us, copies of

22 Exhibit 1448 I'd kind of like to go --

23 THE REPORTER: It's Exhibit 1484.

24 MS. WIVELL: I'm sorry, let me begin again.

25 Q. Now that we all have copies of Exhibit 1484, I'd

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1 kind of like to go through it. At the top of this
2 page you've listed B.A.T Industries P.L.C.; right?
3 A. That's right.
4 Q. And B.A.T Industries P.L.C. is the ultimate
5 parent of Brown & Williamson; isn't it?
6 A. Yes, I think --
7 Q. All right.
8 A. -- you could express it that way.
9 Q. And you said you weren't sure whether there was
10 a holding company between B.A.T Industries P.L.C. and
11 British-American Tobacco Holdings Limited; is that
12 right?
13 A. That's right. I'm not entirely sure whether
14 there is one or not. But it's not a trading company,
15 it would just be a corporate holding company.
16 Q. All right. Now above -- right above Brown &
17 Williamson at the bottom of the chart is B-A-T-U-S
18 Inc.; right?
19 A. That's right.
20 Q. Is that also BATUS, is that how it's said?
21 A. It can be --
22 Yes, it's often referred to as BATUS.
23 Q. All right. Is that a holding company, sir?
24 A. Yes, I believe it is.
25 Q. And is BATUS Holdings, Inc., which is listed

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1 above BATUS on Exhibit 1484, also a holding company?

2 A. Yes.

3 Q. Do you have an office in either of those

4 companies?

5 A. I believe I may be on -- I may be a member of

6 the -- the board of those two companies, yes, but

7 they're not trading companies, they're simply, you

8 know, dormant holding companies.

9 Q. What do you mean when you say "dormant holding

10 companies?"

11 A. They don't trade. That's what I mean.

12 Q. Do they have any holdings other than Brown &

13 Williamson?

14 A. To my knowledge, no.

15 Q. Now right above BATUS Holdings, Inc., I'm afraid

16 to admit I can't read your writing, sir. Would you

17 read that for me, please?

18 A. Very few people can I'm afraid. It

19 says "Staines Investment Co. Limited." And I've a

20 got a question mark next to it because I'm not

21 entirely sure that's the right title of that

22 company.

23 Q. All right.

24 A. But I believe there is another intermediate

25 holding company between between BATUS Holdings Inc.

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1 and British-American Tobacco Holdings Limited.

2 Q. Now as of 1996, January 1st, British-American
3 Tobacco Holdings Limited assumed special
4 responsibilities with regard to the BAT Group tobacco
5 companies; didn't it?

6 A. Well British-American Tobacco Holdings Limited
7 was part of an internal group reorganization of our
8 corporate structure, if that's what you mean, yes.

9 Q. All right. And what --
10 By the way, you're on the board of
11 British-American Tobacco Holdings Limited; aren't
12 you?

13 A. Yes, I am. Yes.

14 Q. Do you hold any other positions within that
15 organization?

16 A. Within British-American Tobacco Holdings?

17 Q. Yes.

18 A. Well my title on the board is regional director
19 for America-Pacific, which is the fact. The -- the
20 responsibilities of Brown & Williamson is to -- is to
21 manage the U.S. domestic cigarette market and the
22 markets of Japan and Korea, which is what we refer to
23 as the America-Pacific Region, is the title.

24 Q. Do you hold any other positions other than the
25 ones that we've talked about in this deposition

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1 already?

2 A. No, I don't believe so.

3 Q. Are you on the board of B.A.T Industries P.L.C.?

4 A. No, I'm not. No, I'm not.

5 Q. You have to wait till I'm finished, sir.

6 A. I'm sorry. Okay.

7 Q. All right.

8 Now how would you describe the activities of
9 British-American Tobacco Holdings Limited since
10 January 1st of 1996 with regard to the BAT Group
11 tobacco companies?

12 A. It's a holding company, as its title suggests,
13 and it acts as a coordinating vehicle, if you like,
14 for the group's investments in the tobacco industry
15 globally.

16 Q. All right. Would --

17 Would it be fair to say that profits from Brown
18 & Williamson are remitted up the system of companies
19 that's outlined in Exhibit 1484, ultimately reaching
20 B.A.T Industries P.L.C.?

21 A. When we make profits, they are remitted to our
22 immediate shareholder and then onwards up, if that's
23 appropriate. Each stage, one would obviously make a
24 further dividend declaration, and if there are
25 profits left over, they would then ultimately be

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1 dividended to B.A.T Industries P.L.C., that's right,
2 and then onwards to their shareholders.

3 Q. All right. Now sir, would you agree that
4 profits are a consideration in what you do at Brown &
5 Williamson?

6 A. Well we are a commercial enterprise and we're a
7 for-profit enterprise. Obviously that is part of our
8 role and responsibility, yes.

9 Q. All right. Would you agree that as your -- part
10 of your job as chairman and CEO of B&W, that
11 improving market share is something that you want to
12 do?

13 A. I would say that is also part of the overall
14 ambition of any business that's a competitive
15 business in the marketplace who wants to grow its
16 market share in that particular market, yes.

17 Q. What do you had understand the term "market
18 share" to mean?

19 A. Well simply that if there are, in -- in relation
20 to the cigarette industry, I -- I imagine you're
21 referring, if there are a hundred million cigarettes
22 sold and we have -- manage to sell 25 million of
23 those hundred million, that would be a 25 percent
24 market share.

25 Q. All right. And would you agree that one of your

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1 objectives as chairman and CEO of Brown & Williamson
2 is for the company, B&W, to be a commercial success?

3 A. I think obviously it's -- it's -- you know, we
4 are in business to -- to be as successful as we can
5 be, certainly, yes.

6 Q. And as a matter of fact, one of the things that
7 you want to do as chairman and CEO of Brown &
8 Williamson is to provide profits ultimately to B.A.T
9 Industries P.L.C. and their shareholders; right?

10 A. That, again, as I said, is one of our
11 objectives. We of course have many objectives as an
12 organization, but one of them would be that, yes.

13 Q. Well what's your most important objective of
14 chairman and CEO of Brown & Williamson, sir?

15 A. It's a very difficult answer to -- to give,
16 because really that's one of the interesting aspects
17 of being a CEO. There are so many different facets
18 to the job and so many different responsibilities and
19 constituencies that one has to serve. Obviously you're
20 looking after your consumers first and foremost,
21 because that's how you stay in business. You're
22 looking after your employees, the community in which
23 you operate. And you have to be concerned, of
24 course, very much with the interests of the
25 regulators, in our business the public-health

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1 authorities, and -- and also of course the
2 shareholders.

3 Q. Now sir, have you worked your way up through the
4 ranks at Brown & Williamson?

5 A. No. I was appointed to the role of CEO --
6 chairman and CEO of Brown & Williamson from a
7 previous role I was involved in within the B.A.T
8 Industries group of companies.

9 Q. What was your previous role?

10 A. My previous role was director for new business
11 development.

12 Q. Now how long had you been director of new
13 business development at B.A.T Industries?

14 A. I took on that role in, I believe it was,
15 November 1992, and I was appointed chairman and chief
16 executive of Brown & Williamson on the 1st of May,
17 1995. So that's, what, three years. Just under.

18 Q. Now who was your predecessor as chairman and CEO
19 of B&W?

20 A. Tommy Sandefur.

21 Q. Mr. Sandefur is dead, isn't he?

22 A. He is now unfortunately deceased, yeah.

23 Q. And who was Mr. Sandefur's predecessor as
24 chairman and CEO of Brown & Williamson?

25 A. That would be Ray Pritchard.

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- 1 Q. And before Mr. Pritchard, who was CEO of Brown &
2 Williamson?
- 3 A. Dr. Hughes, I believe.
- 4 Q. All right. That's Wally Hughes; right?
- 5 A. That's Wally Hughes, that's right.
- 6 Q. And before Wally Hughes, who was president and
7 CEO of Brown & Williamson?
- 8 A. You're stretching my corporate history now.
9 Probably Charlie McCarty, but I honestly can't
10 recall.
- 11 Q. All right. And before Mr. McCarty?
- 12 A. You've -- you've -- I --
13 I would only be speculating now. I would have
14 to check on that and, if you'd like me to find out, I
15 could certainly do so at a break.
- 16 Q. Well let me ask you this, sir: Who would you
17 talk to to find out that, the answer to that
18 question?
- 19 A. Well I would probably walk around the 26th floor
20 of Brown & Williamson Tower because their portraits
21 all appear on the corridor. That would be the
22 easiest way of doing it. Otherwise I would probably
23 ask, I guess, probably my corporate affairs VP.
- 24 Q. All right. Sir, you mentioned Brown &
25 Williamson Tower. That building is located in

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- 1 Louisville; isn't it?
- 2 A. It is.
- 3 Q. And Louisville is the headquarters of Brown &
- 4 Williamson.
- 5 A. That's right, yes.
- 6 Q. Now you said you'd walk around the 26th floor.
- 7 Is that the top floor of the Brown & Williamson
- 8 Tower?
- 9 A. Yes, it is. Yes, yeah.
- 10 Q. And does Brown & Williamson have all the floors
- 11 in the tower?
- 12 A. No, we don't. No, no, we don't. We've sublet a
- 13 number of floors to Fifth Third Bank, and I think
- 14 there's a law firm as well on the 25th and 24th
- 15 floors, and I believe there are several other tenants
- 16 of the -- of the tower. We have about, I don't know,
- 17 I'd say 10 of the floors.
- 18 Q. Okay. Now sir, you said that you were director
- 19 of new business development for B.A.T Industries
- 20 before you became chairman and CEO of Brown &
- 21 Williamson. Is that right?
- 22 A. I was --
- 23 I was actually employed in B.A.T Industries,
- 24 that's quite right.
- 25 Q. All right.

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1 A. And that was my role, yeah.

2 Q. Now in that position, you helped develop, market
3 in the -- what were formerly the Communist countries
4 for cigarettes; right?

5 A. Yes. It was sort of following the 1989 collapse
6 of the Berlin Wall, a lot of these markets in Eastern
7 Europe and the former Soviet Union were opening their
8 doors to capital investment by Western companies, and
9 we were among the ones interested, yes.

10 Q. And in fact you spearheaded B.A.T Industries'
11 business development in the formerly Communist
12 countries; didn't you, sir?

13 A. That's correct.

14 Q. And you traveled around with Ulrich Herter, the
15 managing director of tobacco for B.A.T Industries in
16 developing those markets; didn't you, sir?

17 MR. McLAUGHLIN: Objection to the form.

18 A. He was certainly a colleague, and we did on
19 occasions travel together to some of those markets,
20 yes.

21 Q. Now I'd like to turn our attention back to Brown
22 & Williamson for a bit. Last year, what was Brown &
23 Williamson's net worth?

24 A. Ah, dear. Well I can tell you that we made, at
25 a trading-profit level, a figure in the region of

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1 just under, let's see, a billion dollars. That's
2 right.

3 Q. A billion with a b?

4 A. A b with a b, yes.

5 Q. And when you say you made a training-profit
6 level of just -- in the region of a billion dollars,
7 what do you mean by that, sir?

8 A. Well that is the -- the profit of the enterprise
9 before you take into account interest and tax. You
10 take into account sales tax and excise tax, but not
11 corporation tax. So all the money that might have
12 been lent to Brown & Williamson to invest in the
13 business would, of course, attract interest in the
14 trading profit before you deduct from that the
15 interest you have to pay to outside institutions,
16 banks, et cetera, and the tax you must pay, of
17 course, to the federal government and state
18 governments.

19 Q. All right. Well did Brown & Williamson make a
20 profit last year?

21 A. Yes, we did.

22 Q. What profit did it make?

23 A. Trading profit was that. I can't tell you what
24 the after-tax and interest profit was, but I could
25 certainly find that out for you.

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1 Q. All right. I'd appreciate it if you would.
2 Could you give us a ball -- ballpark figure?
3 A. No. I'd have to take notice of that question.
4 Q. Who would you ask to find out the answer to that
5 question?
6 A. Well I'd probably consult with my chief
7 financial officer, I imagine. That would probably be
8 the first port of call.
9 (Discussion off the stenographic record.)
10 A. I have a few English expressions which I --
11 sometimes don't translate.
12 Q. Who is --
13 A. I appreciate that.
14 Q. Who is the chief financial officer of Brown &
15 Williamson?
16 A. Well I hope you're not going to ask me to spell
17 it, but his name is Carl Schoenbachler.
18 Q. Now sir, how many cigarettes did Brown &
19 Williamson make last year, approximately?
20 A. We manufactured --
21 In the U.S.?
22 Q. Yes, sir.
23 A. -- approximately 130 billion cigarettes.
24 Q. Now can you figure out how many cigarettes that
25 is per month?

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- 1 A. Yes, I can figure that out for you.
- 2 Q. All right. Would you, please.
- 3 A. Well I think that's about 10 billion or slightly
4 more a month.
- 5 Q. And approximately how many cigarettes is that a
6 day?
- 7 A. Oh, I couldn't tell you that. You will have to
8 do the mathematics, I'm afraid.
- 9 Q. Do you know how much profit Brown & Williamson
10 makes per cigarette?
- 11 A. No, I don't know.
- 12 Q. Do you know how much profit Brown & Williamson
13 makes per day?
- 14 A. Well again, these are certain things I can work
15 out for you. I would be happy to do so if you give
16 me some notice of the questions, --
- 17 Q. All right.
- 18 A. -- and I will see if I can get you some answers.
- 19 Q. All right. Well why don't you check during one
20 of the breaks and see if you can get that
21 information, and we'll get back to those questions.
- 22 A. I have a slight problem to -- to share with you,
23 and that is my chief financial officer at the moment
24 is not in the country. But if we can, we will.
- 25 Q. All right. Thank you, sir.

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1 How much did Brown & Williamson spend for
2 advertising last year?

3 A. On media advertising, I think the figure was
4 around 70 million dollars.

5 Q. Seventy, --

6 A. Seven oh --

7 Q. -- seven oh?

8 A. -- million dollars, yes.

9 Q. I'm sorry, I have a bit of a hearing problem and
10 so sometimes I have a little trouble and I ask to
11 repeat things.

12 A. That's okay.

13 Q. So forgive me.

14 Now you said "media advertising." Is there more
15 than one kind of advertising that Brown & Williamson
16 spends money on?

17 A. Well it really depends how you classify
18 advertising. We do some direct mail to consumers of
19 our cigarettes, you know, sending them perhaps some
20 vouchers, money-off vouchers to trade for cigarettes,
21 and we might put some picture with that which might
22 well then be classified as advertising. But I think
23 the media advertising really encompasses what I think
24 your question is focussed on, which is the
25 out-of-home -- I mean the billboards and magazine

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1 efforts, et cetera.

2 Q. In addition to the billboards and magazines,
3 does Brown & Williamson put ads in other media?

4 A. Well I -- I have occasionally seen sort of what
5 they call cab toppers, you know, these taxi toppers
6 that you sometimes see in the streets of New York.
7 If -- if you think that's a different category, that
8 might be a different category. I can't think of any
9 others offhand.

10 Q. How about point-of-purchase advertising, does
11 Brown & Williamson engage in that, sir?

12 A. Yes. I mean they -- I don't really think of
13 that as -- as media advertising as such. That would
14 be what we call below-the-line advertising spent, and
15 that would --

16 Yes, we certainly have to pay money to -- to put
17 up little headers on our advertising -- on our
18 cigarette displays in -- in retail outlets, so you
19 might refer to that as advertising, yes.

20 Q. All right. Well how much does Brown and -- or
21 strike that.

22 How much did Brown & Williamson spend last year
23 for point-of-purchase advertising?

24 A. I have no idea. I'm very sorry.

25 Q. But it is a figure in addition to the 70 bill --

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1 million that you mentioned before; right?

2 A. Oh, yes, that will be in addition.

3 Q. I'm going to re-ask that question so it will be
4 clearer. I don't want there to be any -- any
5 mistakes since I misspoke.

6 The point-of-purchase advertising would be in
7 addition to the 70 million that Brown & Williamson
8 spent last year; right?

9 A. That's right.

10 Q. All right. Now the direct-mail voucher system
11 that you discussed a little earlier, is that also in
12 addition to the 70 million that was spent on media
13 advertising?

14 A. Yes. But of course that would include, you
15 know, postage, packaging, you know, that sort of
16 stuff. If you're --

17 I was giving you the figure, I think, for
18 paid-for advertising, which I think is the normal
19 type of, you know, way of calculating media spent, if
20 you like.

21 Q. All right.

22 A. But it would in addition, you're quite right.

23 Q. How much money did Brown & Williamson spend last
24 year on this direct mail/voucher kind of advertising
25 that we've been discussing?

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1 A. Well it's a very expensive form of doing
2 business because you -- and it also depends how you
3 actually calculate the -- the cost, if you add in the
4 cost of, you know, the discounting that you're
5 delivering to the consumer.

6 Net of discounting, which would be the right way
7 of looking at it, I really couldn't tell you. But I
8 can --

9 It's, I would think, in the region of 20 million
10 dollars.

11 Q. Now you mentioned when we were talking about
12 point-of-purchase advertising, that it was called
13 below-the-line advertising; is that right?

14 A. Uh-huh. Yes.

15 Q. What else goes in that category of
16 below-the-line advertising?

17 A. I guess things like sponsorships. What else?
18 It's mostly --

19 "Below the line" usually refers to point of
20 purchase and sponsorships. I think that's pretty
21 much it.

22 Q. All right. What kind of sponsorship -- I'm
23 sorry. Let me start again.

24 What kind of sponsorships does Brown &
25 Williamson do?

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1 A. Well the only one we do is the Kool Indy Car
2 sponsorship. That's where we have the name "Kool" on
3 the side of a -- an Indy Car that's raced in about 16
4 races, I think, around the country on an annual
5 basis.

6 Q. How much does Brown & Williamson spend on that?

7 A. That, I think, is about 20 million dollars per
8 annum.

9 Q. Is that 20?

10 A. Uh-huh. It's an expensive sport.

11 Q. I guess.

12 Do you pay the driver as well as for the car?

13 A. Well there's many different ways of calculating
14 what you end up having to spend. On occasions you
15 can actually make some money on this by having other
16 sponsors come along and buy some space on the car, so
17 you can perhaps recover some of your initial
18 investment. But you tend to have to support the team
19 so that they can be a competitive team in the
20 series. That's the concept.

21 Q. I see. Well does Brown & Williamson's Kool car
22 have other advertisers?

23 A. Yes, it does.

24 Q. Other cigarette advertisers?

25 A. No, no, no.

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1 Q. All right. Now you said that there was only one
2 sponsorship. Didn't Brown & Williamson use to
3 sponsor the Kool jazz festival?

4 A. Yes, we did. Yes, we did. That was very
5 popular sponsorship, and I think there's a lot of
6 folk who would like us to go back and do it again.
7 In fact, I think the current sponsor of those jazz
8 festivals is often mistaken for -- for us.

9 Q. When did Brown & Williamson stop sponsoring the
10 Kool jazz festival?

11 A. I'm not sure. I think it might have been two or
12 three years ago.

13 Q. But they had sponsored the Kool jazz festivals
14 for decades before that; hadn't they?

15 A. Again, I don't know whether it was decades, but
16 I -- I'm aware there was very strong recall among
17 consumers of the fact that we did do that, and I
18 think our consumers liked it.

19 Q. Now sir, I'd like to talk about you for a
20 second.

21 What's your annual salary?

22 A. My annual salary at the moment, I think, is
23 \$440,000, before tax.

24 Q. Do you receive a bonus?

25 A. If I --

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1 Occasionally, yes.

2 Q. Is that based on performance or profit?

3 A. It's based on a raft of different criteria.

4 Certainly trading profit would be one of them.

5 Q. Okay.

6 A. And -- yes.

7 Q. And is that part of the executive incentive
8 plan?

9 A. Yes, that would be part of an executive
10 incentive plan, so it would apply to me and some of
11 my colleagues. And -- yes, other -- other folk in
12 the organization.

13 Q. And the executive incentive plan is approved by
14 B.A.T Industries' board; isn't it?

15 A. The structure of the plan obviously is -- is --
16 is a Brown & Williamson plan, and when we initiated
17 it -- we've made changes to it from time to time --
18 we obviously required the support of our shareholders
19 to do it, because we're using some of the profits of
20 the company in order to pay out these bonuses,
21 obviously.

22 Q. So the answer to my question is yes, it is
23 approved -- the EIP is approved by the B.A.T board.

24 A. Well I wasn't quite sure what you were asking.

25 If you were asking is the structure of the bonus plan

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1 something that is approved by our shareholders, yes,
2 certainly it is.

3 Q. By your shareholders, you mean the ultimate
4 shareholder, B.A.T Industries P.L.C.; right?

5 A. No, I don't. I think the --

6 What we have to do is when we have a -- a
7 determination as to whether or not we believe there
8 is a bonus to be paid, we make that calculation, and
9 then we consult with our shareholders. In the first
10 instance, of course, that would be British-American
11 Tobacco Holdings.

12 Q. Did you receive a bonus last year?

13 A. You know, I did, and now you're going to ask me
14 what it was and I can't recall. But again, I can
15 find out what that was.

16 Q. All right. Well do you recall the ballpark it
17 was in?

18 A. I don't. I'd only mislead you if I told you.
19 I'll -- I'll find out and let you know at a break.

20 Q. All right. Well was it approximately the size
21 of -- of your salary?

22 A. I wish.

23 No. I think it was less than that.

24 Q. Now sir, do you receive any other benefits as
25 CEO and chairman of Brown & Williamson?

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1 A. We have a couple of other executive benefits: I
2 have a car that's provided by the company; if I'm
3 sick, health care is covered by the company, those
4 sorts of things. I -- I don't have a full list here,
5 but --

6 Q. Are you a smoker?

7 A. Is that enough?

8 Q. Are you a smoker, sir?

9 A. I am a smoker, yes.

10 Q. And you get free cigarettes; don't you?

11 A. Well occasionally, yes, I don't have to pay for
12 my cigarettes. That's one of the other benefits,
13 you're quite right.

14 Q. As a matter of fact, all of the Brown &
15 Williamson executives get free cigarettes as part of
16 the benefits of working at Brown & Williamson; right?

17 A. You know, I'm honestly not sure what the
18 arrangement is, but I think certainly we -- if
19 someone is a smoker, it's -- they can join smoking
20 panels to assess cigarettes, et cetera. I'm sure
21 that they don't have to pay for their cigarettes.

22 Q. Well, you get X number of free packs of
23 cigarettes a week as part of your remuneration;
24 right?

25 A. I --

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1 Well if that's the case, I don't know. But I --
2 I certainly know that I can obtain the sort of
3 cigarettes I like to smoke, and I imagine that there
4 are arrangements for others to do likewise, but I
5 haven't really investigated that.

6 Q. What kind of cigarettes do you like to smoke?

7 A. I smoke State Express 555 and GPC and
8 occasionally Kool, Carlton. I smoke pretty much all
9 our brands.

10 Q. But you prefer State Express 555; don't you?

11 A. Well I come from the U.K., and the flavor of
12 cigarettes in the U.K. is different from that in the
13 U.S. We have not -- don't have the tradition of
14 using fine Kentucky burley tobacco in our cigarettes
15 in the -- in the U.K., so it's a different flavor.

16 Q. Now State Express 555, that cigarette is made by
17 whom?

18 A. Well it's made by a number of companies around
19 the world. But the trademark, if that's what you're
20 asking about, is owned by BATCo.

21 Q. Now Brown & Williamson imports State Express 555
22 into the United States; doesn't it?

23 A. I believe we do, yes.

24 Q. And it's sold in the state of Minnesota by Brown
25 & Williamson; isn't it?

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1 A. I have no idea. I -- if --
2 There are pockets of interest in State Express
3 555 around the country. It's a cigarette that's
4 traditionally been very popular in Asian markets, and
5 so therefore where you have, you know, Little
6 Saigons, Chinatowns, that sort of thing, there is an
7 interest in the brand among consumers of cigarettes
8 who live in those sorts of parts of the country. But
9 whether or not in Minnesota we sell it, I don't
10 know. I -- I would have to check.
11 Q. All right.
12 A. Entirely possible.
13 Q. Would you check and let me know?
14 A. Yes, by all means.
15 Q. All right. Thank you.
16 How long has Brown & Williamson imported State
17 Express 555?
18 A. I think so long as I've been chairman and CEO of
19 Brown & Williamson, but I couldn't honestly tell you
20 when that arrangement began.
21 Q. Now you mentioned you smoke from time to time a
22 couple of other brands or three other brands, GPC,
23 Kool, and what was the third one?
24 A. Well I think I was going to go on to list all
25 our brands, and to save you time I -- I think I

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1 stopped at Carlton. But --

2 Well, I obviously do like to try all our brands.

3 Q. What other brands does Brown & Williamson make?

4 A. Well we have Lucky Strike, Kool, Capri, Carlton,

5 GPC, Viceroy, Tareyton, Pall Mall, we have a number

6 of private-label brands, Prime, Summit. I'm sure

7 I've missed some off, but I --

8 We have quite a large portfolio of brands.

9 Q. All right. You said Prime and Summit were

10 private-label brands. Is that what you said?

11 A. Yes, that's what we call private-label brands.

12 Q. What do you mean by that?

13 A. Well they are brands, in fact, that have a

14 limited distribution, and it's really -- it's an

15 arrangement whereby we manufacture the cigarettes,

16 effectively on behalf of wholesalers in a particular

17 area, and they use those brands to promote trade

18 through their -- through the retailers whom they

19 service. And -- and they're a sort of a

20 bottom-of-the-market type brand, you know, something

21 that attracts footfall that isn't really a --

22 (Discussion off the stenographic record.)

23 A. -- footfall or through retail outlets because of

24 its price, its price position in the market. They

25 are -- they are competitors to own-label brands that

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1 you see when you go into supermarkets, et cetera.

2 Q. I'm not sure that I understand what --

3 "Footfold," is that what you said, "footfold?"

4 A. Footfall, footfall, yeah. People walking into a

5 store.

6 Q. All right. Thank you. I'm sorry. It's my ears

7 this morning; they just aren't working very well.

8 A. Well probably my accent.

9 Q. I -- I think it's probably my ears. I'll take

10 credit for that.

11 Now these other brands, GPC, Kool, Lucky Strike,

12 Capri, Carlton, Viceroy, Tareyton, Pall Mall, they're

13 all sold in the United States; right?

14 A. Correct.

15 Q. They're sold throughout the entire United

16 States, not in particular discrete little areas;

17 right?

18 A. Pretty much they all have national distribution,

19 that's right.

20 Q. And they have had --

21 A. Well, sorry, if I may just correct myself

22 there. Lucky Strike is a brand that we currently

23 have in two varieties, we have the filter variety and

24 the plain-end variety. The filter variety is only

25 actually in distribution currently in California and

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1 a few other metro markets, but by and large limited
2 to California.

3 Q. Now GPC was originally a private-label
4 cigarette; wasn't it?

5 A. Yes, it was.

6 Q. And Brown & Williamson acquired the rights to
7 sell that through a license; right?

8 A. Correct.

9 Q. All right. And GPC is currently Brown &
10 Williamson's largest cigarette brand through sales;
11 right?

12 A. By volume, that's right, yes.

13 Q. All right. Let me rephrase that since that was
14 very inartfully put.

15 GPC is currently the cigarette Brown & Williamson
16 sells most of; right?

17 A. It's the largest seller in our portfolio by
18 volume, that's right.

19 Q. What does GPC stand for?

20 A. Well that's interesting. A lot of consumers
21 ring us up and ask us that. It stands for Generic
22 Products Corporation.

23 Q. That was the company that originally developed
24 GPC; right?

25 A. That was, yeah, the company that originally

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1 developed GPC, that's quite right.

2 Q. You said consumers ring you up. You have a
3 consumer telephone line whose number is printed on
4 the packs of Brown & Williamson cigarettes; right?

5 A. Yes. I believe we were the first company to do
6 that as well.

7 Q. Now sir, go --

8 Getting back to you again, do you have any stock
9 that you own in any cigarette company?

10 A. Only in B.A.T Industries P.L.C., is the ultimate
11 holding company of our tobacco interests around the
12 world.

13 Q. How much stock do you own in B.A.T Industries?

14 A. If I'd known you wanted all these answers -- or
15 questions answered, I certainly would have done some
16 research into my personal affairs before I came. But
17 I don't know offhand. I really don't know. I'd have
18 to check. Because --

19 I think in the region of -- no, I'd have to
20 check. I'd only be misleading you if I made a guess.

21 Q. All right. Sir, you talked about the various
22 cigarettes that have been sold, G -- cigarette
23 brands, GPC, Kool and so forth. GPC is a relatively
24 new brand for Brown & Williamson; isn't it?

25 A. Relatively speaking, yes.

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- 1 Q. All right. But Kool and the other brands have
2 been around for literally decades; haven't they?
- 3 A. Kool certainly has been around since, I think,
4 the early thirties, 1930s, in terms of distribution.
5 Lucky Strike goes back even further. I think Lucky
6 Strike has been a brand in the U.S. tobacco market
7 since 18 something. It's a very old trademark. Pall
8 Mall is equally quite a well-established trademark.
9 And I'm sure that applies to many of the other
10 trademarks, too.
- 11 Q. Were they Brown & Williamson cigarettes at that
12 time?
- 13 A. Lucky Strike?
- 14 Q. Yes.
- 15 A. Lucky Strike and Pall Mall in fact, no, were
16 acquired by us when we merged our business with
17 American Tobacco, what, in 1994.
- 18 Q. All right. Focusing --
- 19 Oh, by the way, Viceroy has been a Brown &
20 Williamson cigarette for decades; hasn't it?
- 21 A. That's right.
- 22 Q. And it's been available almost as long as Kool;
23 right?
- 24 A. Again I think probably that's fair, but I
25 honestly don't know definitely.

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1 Q. All right. Now sir, I'd like to focus for a bit
2 about what Brown & Williamson's told consumers about
3 its cigarettes over the years.

4 Would you agree that Brown & Williamson has a
5 duty to warn the people who smoke its cigarettes
6 about the hazards associated with smoking?

7 A. I think so far the consumers are unaware of the
8 hazards associated with smoking or the risk factors
9 related to smoking, that would be something that
10 Brown & Williamson ought to do. But as I --

11 My position is that, of course, the -- the
12 issues related to smoking are well known by
13 consumers, certainly in the U.S. and probably
14 throughout the world.

15 Q. Well sir, let me ask you this: The cigarettes
16 that -- let me back up. Strike that.

17 Cigarettes manufactured by various BAT Group
18 tobacco companies are sold now in Russia, for
19 example; right?

20 A. Yes, certainly.

21 Q. And do those cigarettes have the same kind of
22 warnings on the sides of the packages that the
23 cigarettes sold here in the United States do?

24 A. That really does depend. Of course it depends
25 on the requirements of the individual countries.

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1 These are countries, of course, that are entitled to
2 make their own laws and regulations about what
3 warnings they want to print on the sides of cigarette
4 packs, and we obviously observe local laws related to
5 those issues.

6 Q. Well sir, there are places, for example, in the
7 states that used to be the USSR where there are no
8 requirements about what needs to be put on a
9 cigarette pack; right?

10 A. You know, I don't believe there are. I think --
11 I think the USSR -- the former USSR and each of those
12 states, now being independent states, have their own
13 rules and regulations about what warnings should be
14 printed on the sides of cigarette packs. I'm not
15 familiar with any state that doesn't have those rules
16 and regulations now in place.

17 Q. Well, are you telling us that Brown & Williamson
18 puts whatever warning is required on the package and
19 nothing more?

20 A. I'm saying that we observe local laws and
21 regulations, and, of course, these totally
22 independent governments are free to regulate their
23 sales of tobacco in the same way that the USS --
24 USR -- A is entitled to determine what they want to
25 see on the sides of packs.

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1 Q. Well let me put it a little differently.

2 Before the government here in the United States
3 required the cigarette manufacturers to place
4 warnings on their cigarettes, did Brown & Williamson
5 put any warning voluntarily on its cigarette
6 packages?

7 A. Did we have warnings on our cigarette packs
8 before, what, 1965, I think, when the regulations
9 came in? No, we didn't.

10 Q. All right. And has --

11 In the intervening period since the warnings
12 were first required here in the United States to be
13 placed on cigarette packages, has Brown & Williamson
14 voluntarily added anything in addition to those
15 warnings that are required by the federal government?

16 A. I believe -- I don't --

17 We haven't, no, but I'm not quite sure whether
18 we're legally entitled to. But I think there is a
19 case that we are pre-empted in some way by federal
20 legislation. But in any event, to answer your
21 question, no, we haven't.

22 Q. Well has -- has Brown & Williamson ever put on
23 any of its cigarette packages that cigarette smoking
24 is addictive?

25 A. No, we haven't.

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1 Q. Now you understand that there are cigarettes
2 that are sold here in the United States that have
3 that statement on the cigarette packs; right?

4 A. I believe the Liggett & Myer Cigarette Company
5 has taken that decision, yes, and in pursuit of an
6 agreement that they made to settle certain
7 litigation.

8 Q. All right. And --

9 But Brown & Williamson hasn't voluntarily placed
10 a statement like Liggett & Myers has on its -- on
11 the --

12 A. No, we haven't.

13 Q. You have to let me finish.

14 A. I'm sorry.

15 Q. Brown & Williamson has not voluntarily placed on
16 the cigarettes it sells anywhere in the United States
17 a statement that cigarette smoking is addictive;
18 right?

19 A. Correct.

20 Q. Now you understand that in 1954, Brown &
21 Williamson was a sponsor of what has been called the
22 Frank Statement to cigarette smokers; right?

23 A. I believe we were one of the signatories of that
24 statement, yes.

25 Q. You've seen that statement; haven't you, sir?

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1 A. Yes, I have.

2 Q. You saw it in preparation for your deposition;
3 right?

4 A. I've seen it many years ago, but -- in addition
5 to the preparation for my deposition.

6 Q. So you saw it before you saw it in regard to a
7 litigation context?

8 A. I can't honestly recall when I was first made
9 aware of the Frank Statement, but it would have been
10 sometime in the '80s, I imagine.

11 Q. How did you happen to become aware of it, sir?

12 A. It was a document, obviously, that was something
13 which was referenced when I was -- when we were
14 discussing the history of tobacco litigation in the
15 U.S.

16 Q. In what context was that, sir?

17 A. Well I --

18 Part of my career with -- with the B.A.T
19 Industries group of companies over the years -- when
20 I first joined the group I was -- I was employed by
21 British-American Tobacco Co. Limited as a lawyer.
22 That's my training, originally I was trained as a
23 lawyer. And in the legal department I'm sure I would
24 have had discussions about issues related to U.S.
25 litigation, which would have included, perhaps, an

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1 awareness of the existence of the Frank Statement.

2 Q. All right. Just so we're clear, when you

3 referred to British-American Tobacco Co. Limited in

4 your last answer, you're referring to BATCo.

5 A. I'm happy to call it BATCo, yes.

6 Q. All right.

7 A. It's more simply. All right.

8 Q. And you are by trade a lawyer; aren't you, sir,

9 a solicitor?

10 A. I was trained as a solicitor, that's correct.

11 Q. You practiced in London.

12 A. I initially spent five years in a law firm in

13 London, and that was before joining BATCo.

14 Q. How long did you spend in the legal department

15 at BATCo?

16 A. Oh, I believe it was --

17 I joined in 1978, 1st of January 1978, and in

18 1982 I went off to West Africa in a management

19 capacity, so I suppose you'd have to say four years.

20 Q. When did you come back from West Africa?

21 A. In 1985.

22 Q. And what did you do then?

23 A. My first role when I came back was as secretary

24 to a comp -- an organization called British-American

25 Tobacco Stores, which was based in Edgeware, North

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1 London.

2 Q. What's its duties?

3 A. It no longer exists. But at the time --

4 Q. What were its duties?

5 A. What were its duties? Okay.

6 It was the holding company for B.A.T Industries'
7 investments in U.K. retailing.

8 Q. So it would be fair to say that you saw the
9 Frank Statement for the first time in that period
10 before you went off to West Africa when you were in
11 the BATCo legal department?

12 A. I imagine that's when it was. I'm not sure I
13 saw it as such, but I was aware of it.

14 Q. What context did it arise in?

15 A. I'm afraid this is 15 years ago. I don't
16 recall. But certainly the Frank Statement is a term
17 that I was aware of and knew about prior to
18 deposition preparation, which is what you originally
19 asked.

20 Q. Sir, the court reporter has handed you a copy of
21 the Frank Statement to cigarette smokers which has
22 been marked previously in this litigation. Would you
23 take a moment and review it, please.

24 A. It's a little difficult to read. Some of the
25 sentences are a bit blurred on my copy, but I think I

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1 properly reviewed it.

2 MS. WIVELL: All right. I would like to
3 take a brief break.

4 THE REPORTER: Off the record, please.

5 (Recess taken.)

6 BY MS. WIVELL:

7 Q. Sir, the Frank Statement that you have in front
8 of you was an advertisement that Brown & Williamson
9 helped pay for; right?

10 A. It was a statement that was put in newspapers
11 around the country, I believe, yes.

12 Q. Was published in 448 newspapers throughout the
13 United States?

14 A. I've heard that number before, but never had to
15 verify it. But it sounds right.

16 Q. You understand it was published in the state of
17 Minnesota; right?

18 A. I believe it was published throughout the
19 States, yes.

20 Q. All right. Including Minnesota?

21 A. I imagine so, yes.

22 Q. All right. Now sir, Brown & Williamson is
23 listed as one of the sponsors. That means they
24 helped pay for the statement; right?

25 A. I assume that, yes, we all paid for the cost of

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1 advertising this statement throughout the U.S.

2 Q. All right. And by "we all," you mean the other

3 sponsors who are listed at the bottom of the Frank

4 Statement; right?

5 A. That's my assumption, yes.

6 Q. All right. And you have no information to the

7 contrary; right?

8 A. Correct.

9 Q. Now -- (coughing) excuse me -- it says in this

10 Frank Statement -- I'm -- I'm sorry, strike that.

11 Brown & Williamson places ads today, doesn't it,

12 in magazines?

13 A. Certainly, yes.

14 Q. Places ads in newspapers; doesn't it?

15 A. Yes. Less so, but yes.

16 Q. All right. And it puts things on billboards?

17 A. Yes, it does.

18 Q. Part of that 70 million dollars that it spent

19 last year advertising its products; right?

20 A. Correct.

21 Q. All right. Now let me ask you this: When Brown

22 & Williamson places those ads on the news -- in the

23 newspapers, the magazines, the billboards, it does so

24 hoping that they will be seen; right?

25 A. Yes, it does.

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1 Q. All right. And when it places those ads in
2 billboards, magazines, newspapers, it expects that
3 they will be read or seen by the public; right?

4 A. You're talking about brand advertising now.

5 Q. Yes.

6 A. Yes. Yes. And so far as brand advertising is
7 concerned, obviously the -- the intention is to -- to
8 draw the -- the consuming public's attention to
9 the -- the availability of that brand.

10 Q. All right. And the advertising that we -- that
11 we've been talking about that Brown & Williamson
12 currently does is directed at both smokers and
13 non-smokers alike; right?

14 A. You're talking about our brand advertising?

15 Q. Yes, sir.

16 A. No, I think our brand advertising principally is
17 addressed -- addressed to audiences of --

18 Q. All right.

19 A. Shall I complete the sentence?

20 -- our current consumers of those particular
21 brands and, of course, smokers of competitive brands.

22 Q. Now when Brown & Williamson currently takes out
23 that kind of advertising, it does so throughout the
24 country; doesn't it?

25 A. Well it will depend.

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1 Q. Can you give me an example of a particular kind
2 of advertising that wouldn't be done throughout the
3 United States generally?

4 A. Yes. The --

5 I mentioned earlier Lucky Strike filter
6 cigarettes, and we've just reintroduced those, and
7 there's an advertising campaign that supports Lucky
8 Strike filters, and it's only really in evidence in
9 the -- the state of California.

10 Q. All right. But apart from that, when Brown &
11 Williamson takes out ads in billboards or puts them
12 in magazines or newspapers, it generally does so on a
13 nationwide basis; right?

14 A. I'm not trying to dispute that, no. Certainly
15 we do, but it rather depends on the brand. If the
16 brand is popular nationally right across all the 50
17 states, then yes, we would.

18 Q. All right. Now sir, when Brown & Williamson
19 takes out these ads on billboards or newspapers or
20 magazines, it hopes that people will read them;
21 right?

22 A. Well we certainly want to, as I said, make the
23 availability of our brands something which consumers
24 of cigarettes are aware of, yes.

25 Q. And when it says something in those ads, Brown &

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1 Williamson hopes that the people who see them will
2 have confidence in those statements; right?
3 A. Are we talking about brand advertising?
4 Q. Yes, sir.
5 A. Well we don't really make very many statements
6 in brand advertising. It's more trying to portray an
7 image associated with a brand.
8 Q. Well sir, let me ask you this: Going back to
9 the Frank Statement, this was a kind of advertising;
10 wasn't it?
11 A. I think this was a communication.
12 Q. All right. Well when Brown & Williamson helped
13 pay for this communication, it wanted both smokers
14 and non-smokers to be able to rely on it; right?
15 A. Well I mean you're asking me what was the
16 intention of Brown & Williamson in 1954. I imagine
17 that they wanted to be making a statement on an
18 important public-health issue to -- principally to
19 consumers of cigarettes.
20 Q. Well --
21 A. In fact it actually says that, doesn't it, "A
22 Frank Statement to Cigarette Smokers."
23 Q. You would agree that Brown & Williamson would
24 want the people who read the Frank Statement to have
25 confidence in what was said in it; correct?

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1 A. I think they --

2 I would expect the -- the authors of this report
3 to want the people who read it, and it's addressed to
4 cigarette smokers, to acknowledge that this was a
5 statement that was honestly held by the individuals
6 who were making it. That's what I would expect.

7 Q. Now the person whose name falls under Brown &
8 Williamson Tobacco Corporation at the bottom is
9 Timothy V. Hartnett, President; right?

10 A. That's what it looks like, yes.

11 Q. All right. Now you understand that Tim --
12 Timothy Hartlett -- Hart -- I'm sorry, strike that.

13 You understand that Timothy Hartnett was
14 president of Brown & Williamson in 1954.

15 A. I imagine so, although I haven't independently
16 checked it.

17 Q. All right. Going back to the Frank Statement,
18 would you agree that it would be appropriate for
19 people who read it to rely on it?

20 A. As I said, I believe that it's important --

21 The authors of this, or sponsors as they're
22 referred to here on the statement -- of this
23 statement, I imagine wanted the -- the people who
24 read it to believe it was the views honestly held by
25 the individuals who made it.

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1 Q. All right. Well keeping in mind that that's a
2 little bit different question than I asked, do you
3 have any information that leads you to conclude that
4 Brown & Williamson did not want people who read the
5 Frank Statement to believe what it said?

6 A. Well I -- I'm sorry, I thought I --
7 I tried to answer that question. They wanted
8 the public to believe, I guess, that this was a view
9 that was honestly held by the individuals who were
10 making it.

11 Q. All right. And you would agree that it would be
12 appropriate for someone reading this Frank Statement
13 back in 1954 to have confidence that what was said
14 here was true; right?

15 A. I can only repeat what I've already said.

16 Q. Well my question is a little different, sir.

17 A. Ah --

18 Q. You would agree, wouldn't you, that a person
19 reading this Frank Statement should have been able to
20 have confidence that what was said here was true.

21 A. Well I would expect them to have whatever
22 confidence they had in the authors of the report.
23 That would depend on what their perception was of the
24 authors of the report, I would have thought, or the
25 statement, but certainly I'm sure the authors

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1 believed that what they were saying were views
2 honestly held by them.

3 Q. Well let me ask it this way, sir: Would it be
4 appropriate for Brown & Williamson or any of the
5 other sponsors to make untrue statements to the
6 public?

7 A. Untrue statements?

8 Q. Untrue, that's right.

9 A. I would hope that they would honestly believe
10 them to be true.

11 Q. All right. Well sir, that's not my question.
12 My question is: Would it be appropriate for Brown &
13 Williamson at any time in its communications with the
14 public to make untrue statements?

15 A. Well depends on your standard, by what you mean
16 by "truth," I assume. And obviously two people can
17 have a different view as to the truth of a
18 statement. I believe that the individuals who
19 authored this report believed themselves it to be
20 true.

21 Q. All right. Well let me put it this way: Would
22 it be appropriate in any circumstance for Brown &
23 Williamson to make misleading statements to the
24 public?

25 A. I think that Brown & Williamson, I would

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1 imagine, would always have sought not to make any
2 misleading statements --

3 Q. Well --

4 A. -- to the public.

5 Q. -- as its spokesperson here today, do you
6 believe it would be appropriate -- would there be any
7 circumstance at all where it would be appropriate for
8 Brown & Williamson to make misleading statements to
9 the public?

10 A. I can't sitting here today think of any
11 circumstance where it would be appropriate for Brown
12 & Williamson to make a statement which it believed
13 was deliberately misleading the public, no.

14 Q. All right. Well let's put aside whether Brown &
15 Williamson believed it was deliberately misleading.
16 Can you think of a single circumstance where it would
17 be appropriate for Brown & Williamson to make an
18 untrue statement to the public?

19 A. Well I'm -- I'm sorry to keep challenging you on
20 this, but it calls --

21 Truth, you know, is something that is in the
22 eyes, often, of the -- of the beholder, and I believe
23 that Brown & Williamson has always sought to make
24 honestly held opinions on things and never honestly
25 to mislead or seek to mislead the public. But, you

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1 know, there may be folk out there that believe things
2 that we've said are not true, but they would have
3 been views honestly held by the individuals who made
4 them within Brown & Williamson.

5 Q. Would it ever be appropriate for Brown &
6 Williamson to make a statement which it did not
7 believe to be true to the public?

8 A. I can't think of any circumstance where that
9 would be appropriate, no.

10 Q. Because it is inappropriate to lie to the
11 public; isn't it?

12 A. Absolutely.

13 Q. Now sir, you would agree that Brown & Williamson
14 had a duty to inform smokers about the hazards
15 associated with its cigarettes even if it had never
16 published the Frank Statement.

17 A. I -- I believe, certainly, that so far as the
18 public was unaware of any risks associated with
19 smoking, that would be something that would be
20 appropriate for any manufacturer of any product to
21 communicate with their public.

22 Q. For example, if a person made a car and knew
23 that under certain circumstances its gas tank would
24 explode, it should either fix the problem or tell the
25 consumer; right?

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1 A. Well you make a specific reference to one I -- I
2 gather it's a leading case, I believe. Are we
3 talking about the Ford Pinto case by any chance?

4 Q. That's what I was alluding to, sir.

5 A. I thought you might be, yes.

6 I clearly think that Ford in that instance was
7 found not to have acted properly.

8 Q. And one of the reasons they acted -- or failed
9 to act properly is because they didn't inform people
10 with Pintos that under certain circumstances, when
11 their cars were involved in minor rear-end
12 collisions, that they might die in the fire that
13 ensued; right?

14 A. I was back in the U.K. when this case happened
15 in -- over here in the U.S., but that's my broad
16 understanding of what the case was about.

17 Q. So it would be a fair statement, wouldn't it,
18 sir, that at the time Brown & Williamson was a
19 sponsor of the Frank Statement, it believed what it
20 said in that statement.

21 A. I would imagine so, yes.

22 Q. Have you ever determined that any of the
23 statements were wrong?

24 A. That they were wrong?

25 Q. Yeah.

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1 A. Well I think there are some statements in here
2 that I personally wouldn't make today. But whether
3 they were wrong when they were made, I don't know.

4 Q. All right. Which of the statements that are in
5 the Frank Statement wouldn't you make today?

6 A. Ah, let me see if I --

7 This is a rather poor copy, I'm afraid, so I
8 don't know if I'll be able to find it. There is a
9 statement here that says -- let's see. I think
10 there's a statement here that says, "We believe the
11 products we make are not injurious to health."
12 That's a very strong and affirmative statement. I
13 don't think that Brown & Williamson would make that
14 statement today.

15 Q. All right. Can you direct me to any ad that
16 Brown & Williamson took out since 1954 where it said
17 we don't believe what we said in 1954, that the
18 products we make are not injurious to health?

19 A. Can I point to an ad that says that? An
20 advertisement? No. But I know that we have made on
21 numerous occasions statements to the effect that
22 there is a strong statistical association between
23 smoking and various ill health -- diseases, and I
24 would imagine that that is something we've said on a
25 public -- public basis.

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1 Q. Well sir, just so we're clear, you can't direct
2 me as you sit here today to a single advertisement
3 that was taken out by Brown & Williamson in the
4 period from 1954 to the present where it said we are
5 taking back what we said in the Frank Statement, and
6 our products may be injurious to health?

7 A. I think we have --

8 As I said, I can't point you to a specific
9 advertisement that we might have placed, although
10 there may well have been ones that made the points
11 that I said earlier, that smoking is a factor in the
12 risk of diseases and there are statistical
13 correlations between smoking and ill health. But of
14 course the -- I mean the understanding in the public
15 has moved on significantly since 1954.

16 Q. All right. But just so we're clear, you cannot
17 direct us to any specific public statement or
18 communication made by anyone at Brown & Williamson
19 that retracted that part of the Frank Statement; can
20 you, sir?

21 A. Sitting here today I can't, but I'm sure I could
22 probably point you to certain statements that might
23 be made in the public domain which would have in
24 effect indicated that we could no longer make that
25 affirmative statement.

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1 Q. All right. Now sir, are there any other parts
2 of the Frank Statement that you disagree with today?

3 A. I honestly haven't focussed on each and every
4 word used.

5 Q. Well take a moment and go back through it,
6 please, so that you can answer my question.

7 A. Do you have a better copy then?

8 Q. I'm afraid this is the best I've got.

9 THE WITNESS: Do we have another copy?

10 MR. McCORMICK: Let me see here.

11 THE WITNESS: Hmm, better with the
12 glasses.

13 MR. McCORMICK: Here's another copy.

14 (Document handed to the witness.)

15 MR. McCORMICK: Whether that's a better
16 copy, I don't know.

17 THE WITNESS: Okay. Thank you.

18 I'll look at them both.

19 A. Well I've reviewed it now, and I don't believe
20 that there are any other statements that I would --

21 There's nothing in here that I would seek to
22 contradict. Of course, it's a statement made in an
23 era long before; literally hundreds of millions of
24 dollars have been spent on research into tobacco
25 since then and the world has moved on. I mean 50

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1 years -- almost 50 years have passed. But I -- I
2 don't broadly disagree with anything else.

3 Q. Now sir, it says here in the Frank Statement in
4 the second column --

5 A. Yeah.

6 Q. -- "We accept an interest in people's health as
7 a basic responsibility, paramount to every other
8 consideration in our business." Right?

9 A. That's what it says, yes.

10 Q. All right. And do you agree with that today?

11 A. I would believe that's still a basic
12 responsibility, paramount to every other
13 consideration in our business. Yes, I would accept
14 that.

15 Q. All right. Now what do you understand the word
16 "paramount" to mean?

17 A. Well I think in normal language it really means
18 above all else.

19 Q. All right. And would you agree that the
20 public-health interest of the -- I'm sorry, strike
21 that.

22 Would you agree that the health of smokers who
23 smoke Brown & Williamson cigarettes are -- or is the
24 most important thing to Brown & Williamson above all
25 else?

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1 A. I think I -- I would hold by what's written
2 here: The interest in people's health is a basic
3 responsibility and is paramount to every other basic
4 responsibility we know.

5 Q. Well just so we're clear, would you agree that
6 the health of smokers who smoke Brown & Williamson
7 cigarettes today is the most important thing to the
8 company?

9 A. People's health is a basic responsibility, yes.
10 And if we're making a product, then it's one of
11 our -- it is our paramount consideration.

12 Q. All right. And the health of the people who
13 smoke Brown & Williamson cigarettes comes above
14 profits as a consideration; doesn't it?

15 A. Absolutely.

16 Q. And the health of the people who smoke Brown &
17 Williamson cigarettes comes above improving Brown &
18 Williamson's market share; doesn't it, sir?

19 A. I would say so, yes.

20 Q. And you would agree that the health of people
21 who smoke Brown & Williamson cigarettes comes above
22 Brown & Williamson's attempts to become -- or to be a
23 commercial success; right?

24 A. Well I think --

25 I mean I don't think they're in conflict, but I

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1 certainly would agree with you, yes.

2 Q. And sir, you would agree that the health of
3 people who smoke Brown -- Brown & Williamson
4 cigarettes is more important to the company than
5 providing profits to B.A.T Industries; right?

6 A. Well I think you -- you touched on that one
7 already. But yeah, I don't think these are in
8 conflict. I think the interest in public health and
9 people's health and consumers' health is something
10 which is very much linked to our ability to remain in
11 business on build our market share, and -- and
12 hopefully grow profits.

13 Q. But it's first in -- I'm sorry, strike that.

14 But you would agree that the health of people
15 who smoke Brown & Williamson cigarettes, that's first
16 in order of importance; isn't it?

17 A. That's what the statement said in 1954, and I'd
18 say I still hold -- hold by that today.

19 Q. All right, good -- glad to hear it.

20 Now let me ask you this, sir: It says in this
21 statement, "We believe the products we make are not
22 injurious to health." And I think you said that you
23 wouldn't make that statement today; right?

24 A. I would not make that affirmative statement
25 today, no.

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1 Q. All right. Now at the end of this document it
2 says, "This statement is being issued because we
3 believe the people are entitled to know where we
4 stand on this matter and what we intend to do about
5 it." Right?

6 A. That's what it says, yes.

7 Q. All right. What do you understand it meant when
8 the statement said "This statement is being issued
9 because we believe people are entitled to know where
10 we stand?" What did that mean, sir?

11 A. I don't know. I mean I -- I assume it means
12 what it says, that we, the sponsor of this statement,
13 believe that --

14 It's addressed to cigarette smokers. I assume
15 it means cigarette smokers are entitled to know where
16 the manufacturers of cigarette products stand in
17 relation to the issue of smoking and health.

18 Q. Well sir, in light of this last sentence in the
19 Frank Statement, wouldn't it have been important for
20 Brown & Williamson to run an update of the Frank
21 Statement and to say, "By the way, we no longer
22 believe part of what we told you in 1954?"

23 A. Well as I said, I --

24 What I said earlier was that I would not now
25 make the same affirmative statement that appears

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1 halfway down the first column of this statement, and
2 I believe we have on numerous occasions indicated
3 publicly that we acknowledge the statistical
4 association between smoking and ill health. I
5 believe we -- we probably have done that
6 effectively.

7 Q. Well are you telling the ladies and gentlemen of
8 the jury that you took out an ad that ran in 448
9 newspapers throughout the United States that said
10 that?

11 A. Well I don't --

12 I said earlier I couldn't point to any specific
13 advertisement where we've done that, but I think we
14 have made statements which have been public
15 statements about the fact that we acknowledge that
16 there is an association between smoking and ill
17 health. And I guess, you know, people's own
18 understanding of the issue has moved on significantly
19 since 1954.

20 Q. Well sir, this last statement in the Frank
21 Statement that says, "This statement is being issued
22 because we believe the people are entitled to know
23 where we stand...." Did that mean that the cigarette
24 industry, and Brown & Williamson in particular, was
25 going to let people know about the research that they

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1 were conducting on cigarette smoking-and-health
2 issues?

3 A. Well we certainly have made a lot of that
4 research public, if that's what you mean.

5 Q. Well sir, isn't it true that as a result of this
6 Frank Statement, people were entitled -- strike that.

7 Isn't it true that as a result of this Frank
8 Statement, smokers were entitled to know all of the
9 research that Brown & Williamson and others in the
10 industry have done on the issue of smoking and
11 health?

12 A. Well I don't know what you're referring to in
13 particular, but obviously as a result of this
14 statement we did participate in the -- in the
15 establishment of The Council for Tobacco Research, as
16 it then became known, and to have quite literally
17 spent in today's value hundreds of millions of
18 dollars, 800 million dollars, I believe, or more, on
19 research, and much of it was -- was published if it
20 was of -- research of a quality that could be peer
21 reviewed and found -- and a publication found for it.
22 So I think that was what happened.

23 Q. Well sir, you would agree that Brown &
24 Williamson has a relationship with BATCo that -- by
25 which they agreed to share research; right?

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1 A. I think over the years there was an arrangement
2 whereby research undertaken by BATCo would be funded
3 by various companies, including Brown & Williamson.

4 Q. And as a matter of fact, that agreement goes way
5 back to when Brown & Williamson was a wholly-owned
6 subsidiary of BATCo; right?

7 A. To be honest, I really don't know when that
8 arrangement began, but --

9 Q. Well sir, do you understand that in the '50s
10 there was an arrangement between Brown & Williamson
11 and BATCo to share research results?

12 A. I -- I'm not directly aware of that, no, but I
13 wouldn't be surprised if it did exist.

14 Q. Just so we're clear here, you understand, don't
15 you, that Brown & Williamson -- strike that.

16 Just so we're clear here, you understand that
17 BATCo had a research and development facility at
18 which it conducted research in Southampton; right?

19 A. BATCo did have a research facility in
20 Southampton, that's right, and still does, but I --

21 I beg your pardon. It transferred it to a
22 subsidiary company of BATCo, I think, B.A.T (U.K. &
23 Export) Limited. I'm not sure exactly when that took
24 place.

25 Q. Took place in 1995; didn't it, sir?

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1 A. I couldn't speak to that directly, I don't know,
2 but probably around that time.

3 Q. And the subsidiary B.A.T (U.K. & Export) is
4 sometimes called BATUKE; right?

5 A. That's right.

6 Q. But you would agree that from the time the
7 research facility was built in Southampton until the
8 transfer to BATUKE, that facility was a BATCo
9 facility.

10 A. Principally I think that's right, yes.

11 Q. And Brown & Williamson -- I'm sorry, strike
12 that.

13 And BATCo did research at the facility on
14 smoking-and-health issues; didn't it?

15 A. It did some smoking-and-health research.
16 Depends what you -- how you define
17 "smoking-and-health research." But it did a lot of
18 research on various experiments with -- I believe
19 with mice, animal experiments. I think it did whole-
20 smoke inhalation tests. And it also did some Ames
21 tests and other bioassay-type test work in
22 Southampton, that's right.

23 If you want to classify that as smoking and
24 health, I think that's perfectly fair.

25 Q. And it shared those results with Brown &

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1 Williamson; didn't it?

2 A. I believe it did.

3 Q. Now let me ask you this: Has Brown & Williamson
4 ever shared with the smokers that buy its cigarettes
5 the results of the inhalation tests that were done at
6 BATCo?

7 A. My understanding, and it's not a perfect
8 understanding, on -- in this area is that a lot of
9 the research that was being undertaken in Southampton
10 was sort of two things: one was in pursuit of
11 research that had been externally already conducted
12 and therefore it was trying to replicate some of the
13 research that had been previously published and
14 therefore was already in the public domain; and also,
15 it was seeking to try to find ways to make
16 improvements in the product, as they would be
17 hopefully recognized as such by public-health
18 authorities.

19 Q. Move to strike as non-responsive.

20 Sir, Brown & Williamson never shared the results
21 of the inhalation tests that were done at -- at BATCo
22 with the people who were buying its cigarettes; did
23 it?

24 A. Oh, I -- I'm sorry. I -- I was going on to say
25 after my original point that this was, therefore, not

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1 research that was -- you know, this was not novel
2 research, and therefore it wasn't something that was
3 outside the public domain. In fact I think I did
4 make that point in my previous response. It was
5 information that wouldn't have added to the sum of
6 knowledge in the scientific community relating to
7 cigarette smoking as far as I'm aware. But it's not
8 a direct --

9 Oh, no, I'm not an expert in this area, but
10 that's my understanding.

11 Q. Just so we're clear here, the answer to my
12 question is no, Brown & Williamson did not share the
13 inhalation research that was done at BATCo with the
14 people who purchased Brown & Williamson cigarettes;
15 did it?

16 A. We didn't go out and publish research findings
17 that were being undertaken internally, mostly I
18 think, as I understand it, because they were focussed
19 on product development and also replicating studies
20 that had already been conducted in the public.

21 Q. Now --

22 A. Are in the public domain.

23 Q. Now sir, you understand that BATCo also had
24 contract research done at contract labs outside of
25 the Southampton facility; right?

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1 A. I believe so, yes.

2 Q. All right. And you're aware that BATCo had, in
3 the period since 1954, asked Battelle Research Labs
4 in Geneva, Switzerland, to do some research on its
5 behalf; right?

6 A. I'm aware of the Battelle research, yeah.

7 Q. All right. And BATCo shared the Battelle
8 research results with Brown & Williamson; right?

9 A. I don't know that directly, but I'm sure it's
10 possible, yes.

11 Q. And you cannot point us to any public statement
12 made by Brown & Williamson to let smokers know about
13 the results of the Battelle research; can you?

14 A. No. Because the Battelle research, as far as
15 I'm aware, was not published because it was not of
16 publishable quality.

17 Q. But my question is simply this: You can't
18 direct us to a single public statement made where
19 Brown & Williamson shared with the people who smoke
20 its cigarettes the results of the research done by
21 Battelle; right?

22 MR. McCORMICK: Excuse me. Objection.
23 Exact same question that was just asked and answered.

24 A. I have indicated that, as I understand it, the
25 Battelle study was not of publishable quality and

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1 therefore wasn't published. But a lot of information
2 that was researched and paid for by BATCo and by
3 Brown & Williamson of course did get published.

4 Q. Well sir, have you ever read the -- the Battelle
5 reports?

6 A. I'm not a scientist. I have certainly, I think,
7 seen pages from it and tried to understand it, but
8 I'm advised that it's -- it's not -- it was not
9 publishable, of publishable quality. And indeed,
10 that was an opinion formed by outside scientists who
11 were actually asked that direct question, I believe.

12 Q. Well actually the outside scientists told Brown
13 & Williamson not to share the information from
14 Battelle with the Surgeon General. Isn't that what
15 the outside scientists said?

16 A. No, I don't believe. I believe --

17 Q. Can -- I'm sorry, go ahead.

18 A. I believe --

19 My understanding is that we actually wanted to
20 share this information with the Surgeon General but
21 were advised that it was not appropriate to do so
22 because it wasn't quality research.

23 Q. Well sir, isn't it true that the Surgeon General
24 never received, prior -- I'm sorry, strike that.

25 Isn't it true that before the issuance of the

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1 1964 Surgeon General's report, that the Battelle
2 research that was done on behalf of BATCo was never
3 shared with the Surgeon General's committee?

4 A. I don't know that directly or indirectly. But
5 as I said, it wasn't publishable quality, so my guess
6 is that it wouldn't be something that was appropriate
7 to share.

8 Q. Well sir, you keep referring to it as not of
9 publishable quality. You're not qualified to make
10 that determination; are you?

11 A. I'm not -- not qualified to really have an
12 expert opinion on this whole area of inquiry,
13 otherwise than to say obviously I have spoken about
14 it to my scientists in Brown & Williamson, and they
15 have advised me that it was -- it wasn't that good
16 research. It was bad research. It wasn't -- it
17 wasn't quality research that warranted peer-review
18 publication.

19 Q. Now this bad research, which Brown & Williamson
20 scientist told you that?

21 A. Well I've discussed a lot of these issues, of
22 course, not just this particular issue, with folk in
23 my Brown -- R&D department in Macon, Georgia, and
24 that's led by the -- the VP of research and
25 development, a gentleman called Tilford Riehl.

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1 Q. All right. And he is the one that told you this
2 was bad research?

3 A. Well you picked up on the word "bad." What he
4 told me was that this wasn't very good research.
5 "Bad" is my editorialization of what he told me.

6 Q. All right.

7 Q. Now sir, just so we're clear, this research that
8 was done by Battelle, that was on the effects of
9 nicotine on the body; wasn't it?

10 A. Yes.

11 Do you want me to tell you what I understand
12 about this research?

13 Q. I'm just asking you about the subject.

14 A. Uh-huh.

15 Q. It was on the effects of nicotine on the body;
16 right?

17 A. I believe it was research prompted by Sir
18 Charles Ellis, who believed that nicotine had
19 beneficial effects, and that I think the Battelle
20 research was aimed at actually trying to establish
21 that so that we could indeed inform the Surgeon
22 General that there were beneficial effects from
23 nicotine.

24 Q. Now Sir Charles Ellis, he didn't characterize
25 this as bad research; did he?

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1 A. I honestly don't know; obviously, the gentleman
2 is deceased. But I think at the time, as I said,
3 there was disappointment within B.A.T Co., BATCo,
4 that this was not something that we could share with
5 the Surgeon General.

6 Q. Well this bad research that was done by
7 Battelle, BATCo paid for it; didn't it?

8 A. BATCo paid for it, I believe, yes.

9 Q. And -- and they --

10 Not only did they pay for the initial research,
11 they paid for subsequent projects; didn't they?

12 A. I believe Battelle --

13 Battelle's a very good institution, I don't mean
14 to imply that they're -- they produce bad research,
15 and I perhaps would like to take that word back
16 because it wasn't a word that's been mentioned to me
17 by my scientists. They simply said this was not
18 quality research and therefore couldn't be published.

19 But no, Battelle is a very worthy institution,
20 and I think we would -- did indeed continue to use
21 them.

22 Q. All right. What's not suitable for publication
23 research, that was Project HIPPO and MAD HATTER;
24 right?

25 A. I'm aware of the name Project HIPPO. I am not

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1 familiar with the name MAD HATTER.

2 Q. All right. Well you understand that there was a

3 Project HIPPO I; right?

4 A. Yes.

5 Q. And then BATCo went and paid for Project HIPPO

6 II; right?

7 A. That's right.

8 Q. All right. And then --

9 And you're not familiar with whether BATCo,

10 after that, went out and paid for MAD HATTER I and

11 II; right?

12 A. I'm not familiar with that name at all.

13 Q. Okay. But just so we're clear, BATCo never

14 shared the results of that research with any people

15 who were smoking cigarettes that it made; right?

16 A. I honestly don't know, but I assume not because

17 it wasn't published.

18 Q. Okay. Now you understand that in addition to

19 the work that was done at Southampton and the work

20 that was done at Geneva, BATCo also had additional

21 work done at other outside labs like Wickham

22 Laboratories; right?

23 A. I've heard the name Wickham. I'm not a --

24 I can't directly testify to the fact that

25 they -- we did work there, but I -- I've heard the

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- 1 name before.
- 2 Q. Well have you heard about Project JANUS?
- 3 A. I know Project JANUS, yes.
- 4 Q. All right. Project JANUS was a project that was
- 5 done over several years; wasn't it?
- 6 A. I believe so. Again, I think it's part of this
- 7 mouse skin-painting and smoke-inhalation work, but
- 8 I'm not entirely sure.
- 9 Q. All right. And the Wickham Labs work on Project
- 10 JANUS, that was never shared by Brown & Williamson
- 11 with the public; was it, sir?
- 12 A. I don't believe so. Because I think, again, it
- 13 was directed more at, as I said earlier, sort of
- 14 confirming work that was already out there in the
- 15 public domain and/or product development work.
- 16 Q. Well you understand that part of Project JANUS
- 17 confirmed that there was a dose/response relationship
- 18 between nicotine and the carcinogenic effect of
- 19 producing tumors in animals; right?
- 20 A. I'm not aware directly of the results of Project
- 21 JANUS.
- 22 Q. Okay. So if -- if that was a result, are you
- 23 saying that that information had been shared with the
- 24 public, the results of the Project JANUS work?
- 25 A. I'm really not an expert in this field. All I

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1 can tell you is that I believe that a lot of the work
2 that was undertaken, if not all of it, was in pursuit
3 of work that was already being published and was in
4 the public domain. I don't think any of the work
5 actually moved the needle in terms of scientific
6 knowledge or understanding of any of these issues.
7 And a lot of it was directed, as I said, at product
8 development.

9 Q. Well it says here in the Frank Statement, in the
10 very first paragraph, "Recent reports on experiments
11 with mice have given wide publicity to a theory that
12 cigarette smoking is in some way linked with lung
13 cancer in human beings." Have I read it correctly?

14 A. I believe you have.

15 Q. And it says at point three under that
16 distinguished authorities point out that there is no
17 proof that cigarette smoking is one of the causes;
18 right?

19 A. That's what it says.

20 Q. And by "one of the causes," that's referring
21 back to that first paragraph that says, "Recent
22 reports on mice have given wide publicity to the
23 theory that cigarette smoking is in some way linked
24 with lung cancer in human beings."

25 A. Let me just quickly review it. I believe that's

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1 what it's saying, but let me just double check.

2 I think it does say in the -- in the -- in the
3 preamble, if you like, to the part you've just
4 referred me to, "...research scientists have publicly
5 questioned the claimed significance of these
6 experiments.

7 "Distinguished authorities point out...." So
8 yes, item two would actually reference back to, I
9 think, the -- the mouse skin-painting experiments as
10 you say, yes.

11 Q. Well sir, isn't it true that Brown & Williamson
12 promised to let people stand on the issues that were
13 addressed in this Frank Statement to cigarette
14 smokers?

15 A. I'm very sorry. Could you possibly repeat the
16 question?

17 Q. Sure.

18 A. I didn't fully understand it.

19 Q. Isn't it true that Brown & Williamson promised
20 to let people know where it stood on issues that were
21 addressed in the Frank Statement?

22 A. No, I don't believe so. I think it says --

23 I don't think we made that commitment directly,
24 no.

25 Q. Well it says in the last statement -- in the

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1 last paragraph, "This statement is being issued
2 because we believe that people are entitled to know
3 where we stand on this matter and what we intend to
4 do about it." Right?

5 A. That's right. It's saying, you know, this is
6 where we stand today.

7 Q. All right. Well sir, didn't the public have a
8 right to know if the cigarette manufacturers had work
9 that confirmed that their products caused tumors in
10 animals?

11 A. Well I -- I don't think that was what we said.
12 I think, you know, there's been -- there was
13 acceptance then, as there's acceptance now, that if
14 you rub the backs of shaved mice with virtually any
15 material, frankly, but certainly with cigarette
16 condensate, you will be able to achieve tumors in the
17 backs of mice. That's something that I think
18 everyone would accept. The question that you asked
19 me is does that have any significance to the -- to
20 human smoking, and I don't think that has necessarily
21 been shown. And the JANUS experiments I don't think
22 were targeted at showing that either.

23 Q. Well sir, isn't it true that Brown & Williamson
24 and BATCo funded research on mouse skin --
25 skin-painting for decades?

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1 A. Indeed.

2 Q. All right.

3 A. We did.

4 Q. And let me repeat my question: If that work
5 showed that condensate from cigarettes made by Brown
6 & Williamson or BATCo produced tumors in mice, didn't
7 this Frank Statement require them to let people know
8 about that research?

9 A. Well honestly, no, I don't think it did.

10 Q. All right.

11 A. Because I think what was being challenged here
12 from this statement was whether or not the facts that
13 you can get tumors on the back of mice by painting
14 them with tar condensate or anything else has any
15 significance in terms of human health and smoking.

16 Q. Well let me -- let me ask it this way.

17 A. That's a different issue altogether.

18 Q. If Brown & Williamson and BATCo had information
19 that animals who inhale cigarette smoke developed
20 tumors, didn't it have a responsibility pursuant to
21 this Frank Statement to let people know about that
22 research?

23 A. Well if we had any research internally --
24 perhaps this would help you -- that actually differed
25 from or moved the needle forward in terms of

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1 scientific understanding of the smoking-and-health
2 issue, I would agree that it would be an important
3 issue there that would have to be discussed and
4 debated as to whether they should make that public.
5 I don't believe we did research that was not
6 already -- the results of which were not already --
7 already been widely known within the scientific
8 community.

9 Q. Well sir, are you telling the ladies and
10 gentlemen of the jury that the research results from,
11 for example, Project JANUS were widely known within
12 the medical community?

13 A. Well we were replicating, as I understand it,
14 existing experiments that were already out there in
15 the public domain and the results of which were
16 known.

17 Q. That's not my question, sir.

18 A. But that's what the situation was.

19 Q. My question is -- no, that's not.

20 My question is: Are you telling the ladies and
21 gentlemen of the jury that the specific results of
22 the Project JANUS research that was done on behalf of
23 the BAT Group companies, --

24 A. Uh-huh.

25 Q. -- that those specific research results were

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1 known to the medical community?

2 A. No, of course not, because they were not
3 published. But there were --

4 The JANUS series of experiments, my
5 understanding, and it's not a perfect understanding
6 because I'm not a scientist, were replicating
7 experiments that had already been made by the
8 external scientific community and had been published.

9 Q. Well let me ask you this: Did Brown &
10 Williamson take out ads in 448 newspapers throughout
11 the United States that said, oh, by the way, we've
12 replicated what these scientists have found with
13 regard to mouse skin-painting?

14 A. Well, I'm sorry, but you're kind of missing the
15 point. Could I try to explain my understanding of
16 what this was about?

17 Q. I'd like you to answer my question, sir.

18 A. Oh, I've forgotten what your question was
19 because it seemed to miss the point. But by all
20 means, ask it again.

21 Q. Let me ask it again. Did Brown & Williamson
22 take out ads in 448 newspapers throughout the United
23 States that said we have replicated the findings that
24 scientists have made with regard to mouse
25 skin-painting and tumors?

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1 A. No, and it would have been inappropriate to do
2 so.

3 Q. Let me ask you this: Did Brown & Williamson
4 ever take out ads in 448 newspapers throughout the
5 United States that said, oh, by the way, we have
6 research findings that show that when animals inhale
7 cigarette smoke, they develop tumors?

8 MR. McCORMICK: Object, there's no
9 foundation to that question -- for that question.
10 A. No, and it would have been inappropriate to do
11 so.

12 Q. Well sir, did Brown & Williamson ever take out
13 ads in any newspaper that said, oh, by the way, we
14 have found that mice, when you do apply tobacco
15 condensate to their backs, do get tumors?

16 MR. McCORMICK: I object. That question
17 has been asked and answered now, Ms. Wivell, several
18 times.

19 A. No, and it would have been inappropriate to do
20 so.

21 Q. Well did Brown & Williamson ever share any of
22 its research findings from the Ames test in newspaper
23 articles?

24 A. No, and it would have been inappropriate to do
25 so.

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1 Q. Now did Brown & Williamson ever share any of the
2 results on the fate of nicotine in the body that it
3 received from Battelle Institute with the public?

4 A. No, and it would have been inappropriate to do
5 so.

6 Q. Why is it inappropriate -- no. No.

7 Let me ask you this, sir: Brown & Williamson
8 has known since the early '50s that there were
9 carcinogens in its cigarettes; right?

10 A. There are approximately, to my understanding,
11 4,000 constituents in tobacco smoke that have been
12 identified by science, and some of them in sufficient
13 quantities are -- have been determined to be
14 carcinogenic, but they have to be in substantial
15 quantities to fulfill that.

16 Q. Well let me ask you this, sir: Brown &
17 Williamson has known that there were carcinogenic
18 substances in its cigarettes since the early '50s;
19 right?

20 A. Well no. I'm trying to make a distinction
21 between what you said and the actual decision, which
22 is to say that there are constituents in tobacco
23 smoke which, if in sufficient quantities, will act in
24 the carcinogenic way. But I --

25 Q. Well what are some of those substances?

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1 MR. McCORMICK: Wait a minute. Could he
2 finish his answer, please, Ms. Wivell?

3 Q. What are some of those substances, sir?

4 MR. McCORMICK: Excuse me, Ms. Wivell.
5 We're going to go back and let him finish his
6 previous answer.

7 MS. WIVELL: Oh, I thought he was done.
8 I'm sorry.

9 MR. McCORMICK: I know you did. That's why
10 I'm suggesting you should let him finish.

11 A. There are ingredients or constituents in smoke
12 which appear in microscopically small amounts, but
13 with -- in -- in significant -- in sufficient
14 quantity may act in a carcinogenic fashion.

15 Q. What are they?

16 A. Oh. The number -- the --

17 The ingredients of which I'm familiar would
18 include things like nitrosamines, tobacco-specific
19 nitrosamines, polyhydrocarbons, and various other
20 chemicals that I'm unaware of. But these appear in,
21 as I said, microscopically small amounts.

22 Q. All right. Well assuming that a person smokes
23 one pack a day of Brown & Williamson cigarettes over
24 a lifetime, how many tobacco-specific nitrosamines
25 will that smoker take into their body?

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1 A. I don't think anyone has ever tried to calculate
2 that. And in -- indeed, as I said earlier, the
3 ingredients in tobacco smoke are in microscopically
4 small amounts and it would be extremely difficult
5 to -- to make those sorts of calculations. I'm sure
6 you could do a calculation. I haven't.

7 Q. Well all right. Who at Brown & Williamson has
8 done the calculations?

9 A. I say you could do such a calculation.
10 Certainly I have had conversations about issues
11 similar to this with my director for regulatory
12 affairs, Dr. Scott Appleton, and he's testified
13 indeed in many cases on -- on issues such as this.
14 I'm not really qualified to -- to give you a detailed
15 answer to it.

16 Q. Well is it your understanding that he has made a
17 calculation of the total tobacco-specific
18 nitrosamines which would be taken in over the
19 lifetime of a one-pack-a-day smoker of Brown &
20 Williamson cigarettes?

21 A. I believe he may have made some calculations
22 around the fact that the -- the amount of specific
23 tobacco nitrosamines, as you refer to them, are, even
24 in a lifetime smoker, relatively small. But I don't
25 have details of those calculations with me today.

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1 Q. Sir, you said that there are polycyclic aromatic
2 hydrocarbons, was that your testimony, that are
3 present --

4 A. Polyhydro --

5 Well again, I'm not a scientist I'm afraid, but
6 I believe I said polyhydrocarbons.

7 Q. All right. You understand that those are
8 carcinogenic substances?

9 A. I understand, yet again, in sufficient
10 quantities some of these components can act as
11 carcinogens, yes.

12 Q. All right.

13 A. But they have to be in significant quantities,
14 and they appear in cigarette smoke in microscopically
15 small amounts.

16 Q. And if we assume a one-pack-a-day cigarette
17 habit for a smoker, over a lifetime how many of these
18 polyhydrocarbons would the smoker take in, sir?

19 A. Again I'm afraid I haven't done that
20 calculation.

21 Q. Has Dr. Appleton?

22 A. I don't know. I'd have to ask him. But he
23 certainly has testified on these sorts of issues in
24 previous cases, and I have -- I'm aware that his
25 testimony does talk about these sorts of issues.

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1 Specifically whether he made those calculations
2 or not, I don't know.

3 Q. By the way, Dr. Appleton, he's a Ph.D.; right?

4 A. He's a doctor of toxicology, that's right.

5 Q. He's not a medical doctor.

6 A. No, he's not a medical doctor. He's a doctor of
7 toxicology.

8 Q. Is there a medical doctor on the staff of Brown
9 & Williamson?

10 A. I don't --

11 I would have to check. I don't know.

12 Q. Do you know if there's ever been a doctor, a
13 medical doctor, on the staff of Brown & Williamson?

14 A. Well we employ a doctor to help treat minor
15 ills, et cetera, for our employees in -- in the
16 tower. I think actually he's not on the -- not on
17 the payroll. He comes in from one of these
18 industrial agencies, so --

19 But I think you're referring to whether we have
20 any medical doctors in the research and development
21 department.

22 Q. Do you?

23 A. I believe they're mostly chemists, but --

24 I think that's principally the science that's
25 most relevant to research and development into

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1 cigarette smoking.

2 Q. Sir, the court reporter has handed you what has

3 previously been marked in this litigation as Exhibit

4 179; right?

5 A. Yes.

6 Q. And this is a document dated April 1954; right?

7 A. It appears so, yes.

8 Q. Do you know when in 1954 the Frank Statement was

9 published?

10 A. Which month?

11 Q. Yes.

12 A. I don't. Does it appear on the statement?

13 Q. Not on the --

14 A. January it says here, I think.

15 Q. All right. This particular document, Exhibit

16 179, is entitled "SMOKE CONSTITUENTS AND THEIR

17 RELATION TO QUALITY, BRISTOL CONFERENCE, APRIL 1954."

18 A. Uh-huh.

19 Q. Right?

20 A. That's what it says.

21 Q. All right. And bears the Bates number on the

22 first page 650379404; right?

23 A. 405. Oh, the first page.

24 Q. First page.

25 A. 404, yes.

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- 1 Q. All right. Now it says under the title on the
2 first page "I. W. Tucker." Right?
- 3 A. Yes.
- 4 Q. Now Irwin Tucker was the first research and
5 development director Brown & Williamson ever had;
6 isn't that true?
- 7 A. I have no idea.
- 8 Q. You've never met the gentleman?
- 9 A. Well I was four years old at the time, 1954. I
10 don't know whether Mr. Tucker is still alive.
- 11 Q. All right. But you never met him?
- 12 A. I never met him, no.
- 13 Q. All right. I would like you to turn to the page
14 that ends with Bates number 434.
- 15 A. 434. Yeah.
- 16 Q. All right. And there do you see a paragraph
17 that begins, "Carbon monoxide...?"
- 18 A. Uh-huh.
- 19 Q. All right. Would you read that paragraph to
20 yourself, please.
- 21 A. Uh-huh.
- 22 Q. All right. You've read it, sir?
- 23 A. Yes.
- 24 Q. All right. Would you agree that in 1954 Brown &
25 Williamson knew that carbon monoxide was a

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1 constituent of the gas phase of cigarette smoke?

2 A. Would I accept that? I -- I -- I've no idea

3 what this document is, I've never seen it before.

4 However, it would appear that it is a Brown &

5 Williamson document. And its author refers to carbon

6 monoxide. I imagine that that is the case, yes.

7 Q. All right. Well sir, if we look at the second

8 page of the document --

9 A. Second page?

10 Q. Yes.

11 -- we see that it says it's a Brown &

12 Williamson document; don't we?

13 A. I wasn't disputing the fact it was a Brown &

14 Williamson document. I was saying it's not one I had

15 seen before.

16 Q. Well sir, on the second page it refers to I. W.

17 Tucker, Director of Research, Brown & Williamson

18 Tobacco Corporation; right?

19 A. Yes, that's what it says.

20 Q. All right. Now sir, going back to my question:

21 Would you agree, then, in 1954, Brown & Williamson

22 knew that carbon monoxide was a constituent of the

23 gaseous phase of smoke?

24 A. Well it seems to suggest so by the fact whoever

25 authored this report or document talks about carbon

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1 monoxide. Not trying to dispute that. I just don't
2 know anything about this document.

3 Q. It says here, "Carbon monoxide which is a
4 constituent of the gaseous phase of the smoke
5 deserves serious consideration in view of its
6 biological implications;" right?

7 A. That's what the document says, yes.

8 Q. Do you know what biological implications this
9 document is referring to?

10 A. I'm afraid I don't. I've already testified I've
11 never seen this document before.

12 Q. All right. Well is there anything in the Frank
13 Statement that tells cigarette smokers that there's
14 carbon monoxide in the gaseous phase of the smoke
15 they're inhaling into their lungs?

16 A. I'm not sure the Frank Statement set out to talk
17 about the constituents of tobacco smoke, so I --

18 The answer to your question is no.

19 Q. All right. Well would you turn to the page that
20 ends with Bates number 431 and would you read it to
21 yourself, please.

22 A. 431?

23 Q. Yes.

24 A. The whole page?

25 Q. Yes.

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- 1 A. I've read the page.
- 2 Q. All right. Now sir, it refers to several other
- 3 constituents of cigarette smoke; doesn't it?
- 4 A. Yes, it does.
- 5 Q. All right. It talks about acrolein being
- 6 present in cigarette smoke.
- 7 A. I didn't spot acrolein, but I'm sure it's there
- 8 somewhere. Would you point me to it?
- 9 Q. First paragraph.
- 10 A. Oh. Well --
- 11 Q. Do you see at the top of the page --
- 12 A. Oh, acrolein. I'm sorry, you're quite right.
- 13 Q. At the top of the page it says, "Acrolein also
- 14 appears to be present...?"
- 15 A. Yeah.
- 16 Q. And among other things that were present were
- 17 formaldehyde?
- 18 A. Formaldehyde. Yes. Formaldehyde.
- 19 Q. Just so we're clear, we're talking about the
- 20 presence of formaldehyde in cigarette smoke that's
- 21 inhaled into the lungs of smokers; right?
- 22 A. Right.
- 23 Q. All right.
- 24 A. As far as I'm aware.
- 25 Q. And also acetaldehyde is identified in this

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1 document as being present in cigarette smoke in the
2 gas phase?

3 A. Acetaldehyde.

4 Could you point me to the line? I'm not -- I
5 don't see it.

6 Q. Yes. In the first paragraph, the last -- the
7 second-to-the-last sentence says "Formaldehyde and
8 acetaldehyde...."

9 A. Oh, I'm sorry. Okay. Yes.

10 Q. And you would agree this document identifies
11 formaldehyde and acetaldehyde as being present in the
12 gas phase of cigarette smoke; right?

13 A. Well I don't want to be picky, but it's saying
14 "can appear in the gaseous phase," I guess that means
15 it doesn't always, but I don't know.

16 Q. And toward the bottom of the page there's
17 reference to phenols.

18 A. Yes.

19 Q. And there --

20 The phenols were present in the cigarette smoke?

21 A. Talks about phenols, certainly, as having a
22 significant factor in the flavor of smoke, yes.

23 Q. All right. Would you turn to the page that ends
24 with Bates number 436.

25 A. Yes.

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1 Q. And there it begins a table entitled "TOBACCO
2 SMOKE CONSTITUENTS;" right?

3 A. Correct.

4 Q. And these tobacco smoke constituents are -- are
5 things that are present when a cigarette smoker
6 inhales a puff of cigarette smoke into his or her
7 lungs; right?

8 A. Well I do have just to go back and say I don't
9 know what this document refers to, who wrote it, what
10 its validity is, but I'm very happy to accept it
11 might be a Brown & Williamson document and --

12 But more than that I can't say. If you ask me
13 to testify that this actually confirms what a
14 cigarette smoker inhales when he inhales cigarettes,
15 I can't do that.

16 Q. Because it's out of your area of expertise;
17 right?

18 A. Well that, and it's a 1954 document and I
19 haven't seen it before.

20 Q. All right. Would you turn to the page that ends
21 with Bates number 440.

22 A. 440.

23 Q. Yes, sir.

24 A. Yes.

25 Q. And there do you see the heading "Cyanides?"

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1 A. Do I see --

2 Yes.

3 Q. All right, sir, and it says "Hydrogen Cyanide;"
4 right?

5 A. Uh-huh.

6 Q. And it gives -- by the way, this is --

7 This reference is in the table that we were just
8 looking at a little earlier entitled "TOBACCO SMOKE
9 CONSTITUENTS;" right?

10 A. Seems to be part of the same table.

11 Q. Do you understand that cyanide is used in some
12 states in the United States to terminate the lives of
13 certain criminals?

14 A. I'm aware it's a very toxic poison, but I'm also
15 aware it appears in microscopically small amounts in
16 the pits of apples.

17 Q. All right. Well let me ask you this, sir: How
18 much cyanide does a one-pack-a-day cigarette smoker
19 inhale over their lifetime?

20 A. I'm afraid I don't know, any more than I know
21 how many pits it requires you to eat over -- over a
22 lifetime. I just don't have any expertise in this
23 matter. But as I said earlier, constituents in smoke
24 appear in microscopically small amounts, and I really
25 don't know what the -- I haven't any -- any

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1 information at all on the origin of this document and
2 what it tries to purportedly say.

3 Q. Do you eat the pits of apples?

4 A. I do, actually, yes. The whole core.

5 Q. All right. Well let me ask you this, sir: Is
6 there any information in the Frank Statement about
7 the fact that hydrogen cyanide gets taken in by
8 smokers when they inhale cigarette smoke?

9 A. Well I think I said earlier that there's no
10 reference in the Frank Statement of any of the
11 constituents of cigarette smoke, and I don't think it
12 was appropriate -- it wasn't intended actually to be
13 what the Frank Statement did.

14 Q. Let me ask you, sir, is hydrogen cyanide present
15 in smoke that's inhaled today?

16 A. I can't answer that directly "yes" or "no." It
17 may be.

18 Q. Do you know if acrolein is present in cigarette
19 smoke today?

20 A. Again, it may be. I don't know.

21 Q. All right. How about nitrosamines, cigarette --
22 Tobacco-specific nitrosamines are still present
23 in -- in cigarette smoke when a smoker inhales a
24 puff; aren't they?

25 A. They are indeed, yes. Although, of course, over

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1 the years cigarette construction has changed
2 significantly. All cigarettes usually now contain
3 a -- have a filter. In 1954 that probably wouldn't
4 have been the case. And they all by and large
5 deliver much lower levels of tar and nicotine than
6 the cigarettes from the 1950s. So this document
7 would not necessarily reflect the constituents in
8 cigarette smoke as they appear today.

9 Q. Well sir, can you direct us to one constituent
10 that was in the smoke of Brown & Williamson
11 cigarettes in 1954 that is not there today?

12 A. No. I'm not an expert. I'm sorry. But I mean
13 there may well be, but I'm just unable to say "yes"
14 or "no."

15 Q. And would you look to Dr. Appleton to answer
16 that question?

17 A. It might be quite difficult for Dr. Appleton to
18 answer that question given that he is roughly my age
19 and, therefore, wasn't really that familiar with the
20 science of cigarette smoke in the early '50s.

21 Q. Well Brown & Williamson didn't even have a
22 chemistry lab in 1954 when the Frank Statement to
23 cigarette smokers was published; did it, sir?

24 A. I really can't answer that question. I would
25 have thought they probably did do analytical tests on

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1 tobacco and probably had a laboratory to do just
2 that, so I'd be surprised if there wasn't some
3 laboratory work being undertaken in that time.

4 Q. They tested for taste; didn't they, sir?

5 A. Well taste is obviously an important criteria.

6 You're talking about an agricultural product here.

7 The material is tobacco. It grows in the field.

8 Climatic changes year to year will mean that

9 cigarettes may taste differently from year to year.

10 Q. Now sir, you understand that in this particular
11 case, the state of Minnesota and Blue Cross Blue
12 Shield versus the various cigarette manufacturers and
13 other defendants, that the companies required
14 plaintiffs' counsel to sign a protective order in
15 order to get the documents out of Brown &
16 Williamson's files; right?

17 A. I have no knowledge of that. I do know that
18 we've handed over seven and a half millions of pages
19 of documents to Minnesota. But other than that, I
20 don't know.

21 Q. Well sir, no one has ever shared with you the
22 fact that we had to sign a protective order agreeing
23 that we won't share these documents with the public?

24 A. Well I'm sure there are certain rules in every
25 jurisdiction that are different, and I wouldn't

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1 expect to see every, you know, order that might be
2 placed on documents in -- from state to state, no.

3 Q. All right. Well you understand that this
4 document at the top, Exhibit 179, says "(BROWN &
5 WILLIAMSON) PROTECTED BY MINNESOTA TOBACCO LITIGATION
6 PROTECTIVE ORDER;" right?

7 A. That's what it appears to say, yes.

8 Q. Well let me ask you this: Do you believe it
9 was -- would be appropriate to share with the public
10 the results of research that was done by B&W and
11 BATCo on smoking-and-health issues?

12 A. Could you repeat that question again for me?

13 Q. Yes.

14 Do you believe it would be appropriate to share
15 with the public the results of research that was done
16 by B&W and BATCo on smoking-and-health-related
17 issues?

18 A. Insofar as the information that we have is any
19 different to information that was outside in the
20 public domain, I think that would possibly raise a
21 question as to whether we should make that public,
22 but I'm not aware of any research that was undertaken
23 that was otherwise than in pursuit of existing
24 studies that were published.

25 Q. Well sir, I'm asking you this: Do you believe

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1 it's appropriate for Brown & Williamson and BATCo to
2 share the information that they did on
3 smoking-and-health research with the public?

4 A. Well I'm trying --

5 MR. McCORMICK: Ms. Wivell, I'm going to
6 object to that question now. It's been asked
7 multiple times and it's been answered, so I would
8 object as asked and answered.

9 A. I can only repeat what I said, really, which is
10 to say if we have some information that was novel,
11 different from the understanding within the general
12 public and scientific community, then that would
13 certainly raise the issue of whether we should make
14 that public. But my understanding is that there
15 is --

16 I mean this is a product, counselor, that really
17 has been researched more than any other product on
18 the face of the earth. There's a great deal of
19 understanding in the public domain and in the
20 scientific community about it.

21 Q. Well then do you have any objection, speaking on
22 behalf of your company, to allowing us, the
23 plaintiffs lawyers in this case, to let the public
24 know what your company has found out by way of
25 smoking-and-health research over the years?

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1 A. Well I --

2 As I testified already, I'm not aware of the
3 negotiations around the protective order or why it
4 was deemed appropriate at that time to (check) seem
5 one and why you indeed doubtless agreed to it. So I
6 really can't speculate about that.

7 Q. Well would you agree today on behalf of your
8 company to let lawyers who represent the state and
9 Blue Cross Blue Shield take out newspaper ads and
10 tell the citizens what Brown & Williamson's documents
11 say?

12 MR. McCORMICK: I'm going to object to that
13 question.

14 A. I would certainly want to consult with my -- my
15 counsel and find out what their perspective on the
16 whole issue was, and --

17 Q. Why?

18 A. Because I think clearly it's an important
19 issue. Why -- why not?

20 Q. Well if Brown & Williamson and BATCo have
21 nothing to hide, isn't it -- wouldn't it be
22 appropriate to show the public the documents that
23 we've been provided in this litigation?

24 A. Well, I can only say this is an area that I'm
25 not familiar with, discussions between our counsel

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1 and your counsel or the state of Minnesota's counsel
2 relative to how documents would be protected, but I
3 think it's entirely appropriate in any litigation
4 that documents do retain some confidentiality, rather
5 than seems to be a lot of the practice over here, to
6 try to try some of these cases in the public domain.

7 Q. Well is there any reason you can think of that
8 Brown & Williamson would not want its research
9 results to be shared with the public?

10 A. I have already tried to explain that I don't
11 think our research results would warrant publication
12 because there already was significant literature,
13 external scientific research, internal scientific
14 research through the offices -- through the --
15 through the offices of the CTR. There's more
16 information about smoking-tobacco constituents, et
17 cetera, in the public domain virtually -- about
18 cigarettes in general -- than any other product on
19 the face of the earth that I can think of. So I
20 don't think it would move the -- the -- the
21 understanding of the issue further forward.

22 And you're really asking me about protective
23 orders, and I don't know the genesis of the
24 protective order, and I would want to consult with my
25 external counsel and my internal counsel before

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1 authorizing you to publish anything that's
2 confidential to the public at large.

3 Q. Well sir, wouldn't you agree that if
4 something -- let me start again.

5 Wouldn't you agree that if Brown & Williamson
6 and BATCo had -- had confirmed scientific work that
7 had been done by others, that might move the ball
8 forward with regard to some of the people who smoke
9 Brown & Williamson cigarettes?

10 A. "Move the ball forward." What -- what do you
11 mean? I'm sorry.

12 Q. Well sir, wouldn't you agree that if something
13 actually came from a cigarette company confirming
14 research done by independent scientists, that might
15 have additional significance in the mind of someone
16 who was unclear about whether cigarettes caused
17 disease?

18 A. Well I --

19 All I can tell you is that there's been a wealth
20 of information published by the tobacco industry
21 via -- effectively via its sponsorship of the CTR,
22 work that's been done by highly rec -- very
23 professional external scientists, some of whom have
24 been Nobel prize winners, and that information is out
25 in the public domain. That has been information that

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1 has been sponsored by and funded by the tobacco
2 industry. So I -- I -- I don't quite follow what
3 you're asking me.

4 Q. Well sir, isn't it true that if Brown &
5 Williamson and BATCo had done research or had
6 contract research done for them at Battelle or
7 Wickham Labs that confirmed another scientist's work,
8 and that they published that result and said yes, we
9 confirmed what this particular scientist or that
10 particular scientist found out about animal
11 inhalation tests, for example, that that might be an
12 important fact that a person smoking cigarettes might
13 want to take into consideration?

14 A. I think you're mischaracterizing the work that
15 we did. I think the work, as I said, was internal
16 work largely directed at product development, and I
17 don't think that it would have, as you said, moved
18 the ball forward one jot. I think there's a very
19 broad understanding in the public domain about the
20 risks associated with smoking, that smoking is a risk
21 factor in a number of disease. I don't think it
22 would have changed the circumstance one jot, no.

23 Q. Well sir, Brown & Williamson felt it necessary
24 to take out a statement in 1954 denying the
25 importance of experiments with mice; right?

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1 A. I believe the experiments with mice actually,
2 subsequent to that statement, have broadly been
3 regarded as, you know, not really quality research in
4 any event. So science has moved on significantly
5 since 1954. Within that respect, at least, I think
6 the authors of this report were probably right.

7 Q. Well sir, let me ask you this: During the time
8 that Brown & Williamson and BATCo were paying for
9 research which confirmed the results of the mouse
10 skin-painting studies, can you direct us to one ad
11 that was taken out that said, oh, by the way, our
12 scientists have confirmed the findings of mouse
13 skin-painting tests?

14 MR. McCORMICK: Ms. Wivell, how many times
15 are you going to repeat this question? This is
16 really a waste of time. It is into the realm of
17 harassment. I'm going to object, it's been asked and
18 answered again and again.

19 A. I have to say I kind of feel the same way, that
20 I have already answered this question before already,
21 and I can only repeat my previous testimony.

22 Q. Can you direct us to a particular ad that was
23 taken out by Brown & Williamson or BATCo that said,
24 oh, by the way, research that we are paying for
25 confirms the findings of mouse skin-painting

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1 studies?

2 MR. McCORMICK: Same objection, Ms. Wivell.

3 A. Mouse skin-painting is a -- is -- has generally
4 been discredited within the scientific community as
5 not indicative of anything. I think --

6 As I repeat, I think the -- the statement as
7 made by -- in the Frank Statement, actually, that
8 this has no relevance to the health consequences of
9 cigarette smoking, was probably a fair statement in
10 1954 and probably would be a fair statement today.

11 Q. Well sir, isn't it true that at least for two
12 decades after this Frank Statement was published,
13 Brown & Williamson and BATCo paid for mouse
14 skin-painting studies?

15 A. As I've tried to indicate earlier, it was a very
16 comprehensive effort to continue to better understand
17 our product and also to -- to seek improvements in
18 the product.

19 Q. And --

20 A. And that might subsequently be confirmed by
21 independent public health authorities as, you know,
22 maybe a safer cigarette. And that was a very
23 important, I think, piece of work that was undertaken
24 and was in -- very much in line with our commitment
25 that we gave to the public in the Frank Statement.

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1 THE REPORTER: We have to change tape. Off
2 the record, please.

3 (Recess taken.)

4 BY MS. WIVELL:

5 Q. Sir, before we went off the record we were
6 talking about the -- what you referred to as the very
7 comprehensive effort that went on in Brown &
8 Williamson -- or not at Brown & Williamson, but
9 conducted by Brown & Williamson and BATCo with regard
10 to the -- the Project JANUS studies. Do you recall
11 that?

12 A. It was part, as I understand it, Project JANUS,
13 of a -- quite a significant amount of biological
14 research that was undertaken within BATCo, yes.

15 Q. All right. And --

16 (Coffee cup handed to the witness.)

17 THE WITNESS: Oh, thanks very much. Great.

18 Q. And the research that --

19 This biological research went on for more than
20 two decades; didn't it?

21 A. Yes, I think it did.

22 Actually, you referenced earlier that the mouse
23 skin-painting work went on for decades. I'm not sure
24 it did. I think it might have gone on for a decade
25 or less than a decade. But the biological work

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1 itself is, I think, less than a decade.

2 Q. Let's just focus on the mouse skin-painting
3 studies.

4 During that period, neither BATCo nor Brown &
5 Williamson ever took out an ad that told their
6 results of mouse skin-painting studies; did they?

7 MR. McCORMICK: Objection, asked and
8 answered.

9 A. Specifically, I don't believe we did, although
10 already the information was widely known in the --
11 both the public and the scientific community.

12 Q. Now sir, you would agree that when Brown &
13 Williamson makes a public statement, the public has a
14 right to believe that statement; right?

15 A. Again we have touched on this earlier, which is
16 to say that I think -- I would hope, at least, that
17 the public would understand that when we made a
18 statement, it was an honestly held belief.

19 Q. I'm going to show you a news release from Brown
20 & Williamson dated May 10th, 1994, Bates number
21 202337394, which has previously been marked in a
22 Brown & Williamson deposition.

23 For the record, I would like to say,
24 unfortunately, I tried to find the exhibit number
25 this morning and wasn't able to.

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1 MR. McCORMICK: Under those circumstances,
2 could we mark this so that we will be able to have a
3 reference to it?

4 MS. WIVELL: That's fine.

5 THE REPORTER: Do you know what deposition
6 it was marked in?

7 MS. WIVELL: Yes, it was marked in the
8 Stowe deposition.

9 THE REPORTER: And I didn't take that, so
10 we'll have re-mark it.

11 (Plaintiffs' Exhibit 1485 was marked
12 for identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as
15 Plaintiffs' Exhibit 1485, this is a press release
16 from Brown & Williamson that bears the Bates number
17 202337394; right?

18 A. Correct.

19 Q. All right. Would you take a moment and read it,
20 please.

21 A. I've read it.

22 Q. This exhibit, Exhibit 1485, discusses whether
23 cigarette smoking is addictive; right?

24 A. Well I think it's a response to statements in
25 the media that -- just reading between the lines

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1 of -- of the press release, because I was not, as you
2 know, responsible for Brown & Williamson in May 1994,
3 this was a year before I joined, but reading between
4 the lines, it seems to be responding to articles in
5 the media saying that the documents stolen by Merrill
6 Williams somehow indicated that smoking was
7 addictive -- was addictive and that was known by
8 Brown & Williamson.

9 Q. Well Brown & Williamson's designee has told me
10 that Brown & Williamson believes cigarette smoking is
11 not addictive. Do you agree with that, sir?

12 MR. McCORMICK: I'm going to object to that
13 preamble. What do you mean, Ms. Wivell, "Brown &
14 Williamson's designee?"

15 A. I -- I was going to ask the same question, if I
16 may. I mean what --

17 Could you perhaps tell me what you mean by
18 "Brown & Williamson's designee?"

19 Q. Well sir, you understand that under the
20 Minnesota Rules of Civil Procedure, the plaintiffs
21 designated certain topics, including the subject of
22 addiction, on which Brown & Williamson had to provide
23 a person to testify; right?

24 A. I didn't know that specifically, no, but I'm
25 perfectly prepared to accept that's what is the

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1 situation.

2 Q. Let me ask it this way, sir: Do you believe
3 cigarette smoking is addictive?

4 A. It's not a term I'd use in relation to cigarette
5 smoking, no.

6 Q. You know it's a term that has been used within
7 Brown & Williamson to refer to cigarette smoking.

8 A. I'm aware it's a term that has been used
9 interchangeably with "habit," both in the external
10 community and probably within Brown & Williamson too,
11 but I certainly regard the word "addiction" as more
12 appropriately used in relation to drugs such as
13 heroin and cocaine. And indeed, that was the
14 conclusion of the Surgeon General in 1964.

15 Q. All right. And you understand that the Surgeon
16 General in 1988 changed his mind and decided
17 cigarette smoking was addictive; right?

18 A. And I think you're absolutely right, and the
19 point is referenced here in the -- in the document
20 that you've shown me.

21 Q. Well sir, isn't it true that the cigarette
22 industry insists that cigarette smoking is not
23 addictive because the entire matter of addiction is
24 the most -- most potent weapon a plaintiffs' lawyer
25 can have in a cigarette case?

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1 A. Personally I think it's not a term that we'd use
2 in relation to cigarette smoking because people can
3 and do quit, so it doesn't seem to me to be an
4 appropriate word in relation to cigarette smoking.
5 And that's my reason for not wanting to label
6 cigarette smoking addictive. People --

7 Q. Well sir, have you ever heard it said within
8 Brown & Williamson and that we can't defend smoking
9 as a free choice if a person is addicted?

10 A. I think it certainly would make it a lot more
11 difficult to -- to do so, but I don't necessarily
12 believe you couldn't, because the word addiction now
13 is -- has really become, you know --

14 The man in the street or woman in the street
15 uses the word, you know, in relation to chocolates
16 and television and a lot of other things. Doesn't
17 have the same sort of scientific purity as perhaps it
18 once had.

19 Q. Sir, showing you what's previously been marked
20 in this litigation as Plaintiffs' Exhibit 450, this
21 is a letter or a memo from Mr. Knopick at The Tobacco
22 Institute to Mr. Kloepper at The Tobacco Institute.
23 Would you take a moment and review it, please.

24 A. Could I just say before I review it that I don't
25 know either of these two gentlemen, so I -- I'm

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1 perfectly prepared to accept that they are members of
2 The Tobacco Institute, or once were, but I can't
3 speak to that directly myself.

4 I can't make out some of the words, I'm afraid.
5 I'm still trying to read it though.

6 I've read the memo now --

7 Q. All right.

8 A. -- as best I can.

9 Q. The document, Exhibit 450, on the second page
10 says at the end, "Shook, Hardy reminds us, I'm told,
11 that the entire matter of addiction is the most
12 potent weapon a prosecuting lawyer can have in a lung
13 cancer/cigarette case. We can't defend continued
14 smoking as, quote, free choice, quote, if the person
15 was, quote, addicted, close quote." Right?

16 A. That's what the document says.

17 Q. Now Shook, Hardy, they're litigation counsel to
18 the tobacco industry in the United States; right?

19 A. Specifically I believe they do represent one or
20 two members of the tobacco industry, and I think
21 their expertise, if you like, is certainly in the
22 area of smoking-and-health litigation.

23 Q. Shook, Hardy has represented Brown & Williamson;
24 hasn't it?

25 A. I believe they have in the past represented

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1 Brown & Williamson, yes.

2 Q. And sir, the sentiments that are expressed here
3 that we can't defend smoking as free choice if a
4 person is addicted, you've heard those sentiments
5 stated within Brown & Williamson; haven't you?

6 A. No, I haven't directly, but I -- I've already
7 signed up to the fact that I think if the word
8 "addiction" was understood to mean that it was
9 impossible to quit smoking, then that would clearly
10 have an impact in terms of smoking-and-health
11 litigation. But that's not, of course, the
12 situation. There are as many Americans today who
13 have smoked and quit as there are folk who continue
14 to smoke.

15 Q. And how many of those Americans, sir, have had
16 to restart smoking?

17 A. I couldn't directly answer that, but I would say
18 that there are as many people today who have quit
19 smoking successfully as those who continue to smoke,
20 so I think that clearly indicates that smoking is not
21 an addiction.

22 Q. What do you base that on, sir?

23 A. What do I base what on?

24 Q. Well your idea that there are as many people who
25 have quit smoking as who continue to smoke.

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1 A. I think the -- the statistics are out there.

2 Q. What statistics, sir?

3 A. I seem to recall the matter was referenced by
4 the Surgeon General in a recent report, but I'd have
5 to go back and check that. But --

6 Q. And didn't that Surgeon General also conclude
7 that most people who try to quit smoking actually go
8 back to it?

9 A. I have had some conversations with an external
10 scientist on this very issue, and it's very
11 interesting, actually, that certainly people in their
12 twenties and thirties seem to lapse, you know, rather
13 more than people in their forties and fifties. As
14 you get slightly older, possibly you change the
15 risk/benefit analysis in your own mind and you become
16 slightly more determined to quit smoking. That seems
17 to be the statistics as explained to me by this
18 external scientist.

19 Q. Well that's not my question, sir. My question
20 is: This Surgeon General's report that you
21 referenced, it concluded that most people who try to
22 quit smoking are unsuccessful in doing so and
23 actually go back to it; don't they?

24 A. Well as I was trying to explain it may be true
25 in certain age groups, but it's not -- doesn't seem

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1 to be true of people who perhaps are in their forties
2 or fifties. They're much more successful at quitting
3 smoking.

4 Q. But I'm focussing --

5 A. I think the statistic I quoted earlier is -- is
6 true, that there are now as many people who have quit
7 smoking as continue to smoke.

8 Q. But I'm focusing on the Surgeon General. The
9 Surgeon General's statistics show a slightly
10 different story; don't they, sir?

11 A. I don't think they do. I think they're
12 consistent with that. It's simply that we have done
13 an analysis based on ages --

14 Q. Who has?

15 A. -- and it does appear --

16 This external scientist has done an analysis on
17 how people quit over certain ages. And as you become
18 older, you seem to have a better ability to quit and
19 stay off cigarettes than when you're younger, which
20 seems -- to me at least suggests that either to
21 accept your analysis or your scenario that smoking
22 becomes less addictive as you get older, or smoking
23 is not an addiction at all, it's simply a matter of
24 how you determine the risk/benefit analysis in your
25 own mind.

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1 Q. Now sir --

2 A. And I think that the statistics I've seen, as I
3 said, from this external scientist seem to support
4 that.

5 Q. Now sir, what scientist are you referring to?

6 A. Mr. Silverberg I think his name is, but I can
7 check that.

8 Q. Have you read the testimony of the experts on
9 the addiction issue that defendants have offered in
10 this case?

11 A. I beg your pardon? Have I read the evidence --
12 Could you repeat the question? I'm sorry.

13 Q. Yes.

14 The people who defendants in the state of
15 Minnesota's case, have you read any of defendants'
16 addiction experts and their opinions about whether
17 cigarette smoking is addictive that you and your
18 fellow defendants are offering in this case?

19 A. I have certainly seen some of the arguments, not
20 in this particular case I don't think, but perhaps in
21 pleadings and other proceedings where these sorts of
22 issues have been debated. I can't recall, honestly,
23 which one.

24 Q. Have you specifically read the deposition
25 testimony of Peter P. Rowell in this case?

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1 A. I haven't heard the name Peter P. Rowell before,
2 so I --

3 I may have read it, but I suspect not.

4 Q. Did anyone share with you Dr. Rowell's --
5 (Telephone rings.)

6 MS. WIVELL: Let's go off the record.

7 THE REPORTER: Off the record, please.

8 (Discussion off the record.)

9 BY MS. WIVELL:

10 Q. Did anyone share with you the -- Dr. Rowell's
11 opinion that -- whether cigarette smoking was
12 addictive that he has expressed in this case?

13 A. As I said, I haven't heard the name Rowell
14 before. I may have seen the testimony, but I -- I
15 don't actually recall having done so.

16 Q. Sir, the BAT Group considered looking into
17 marketing cigarette patches; didn't it?

18 A. I believe there was some work done. I think
19 probably --

20 I can't remember which company in the B.A.T
21 Industries group of companies might have done some
22 sort of analysis of whether it was appropriate to
23 consider marketing cigarette patches, but I think the
24 conclusion was that we would not.

25 Q. Brown & Williamson did that analysis; didn't it?

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1 A. I believe it might have been Brown &
2 Williamson. I was trying to think whether it was
3 Brown & Williamson or not, and my suspicion is it was
4 Brown & Williamson, yes.

5 Q. And sir, doesn't the fact that people use
6 cigarette patches to try and quit smoking suggest
7 that smoking is addictive?

8 A. I really don't think so, no. I mean I certainly
9 accept the proposition that it can be tough to quit
10 smoking, you do need to have a firm determination to
11 do so. And smoking is a pleasurable habit, and
12 giving up a pleasurable habit can be tough, and maybe
13 cigarette -- I'm sorry, not "cigarette" -- nicotine
14 patches can help in that process. I have no reason
15 to suppose that indicates that cigarette smoking is
16 addictive, no.

17 Q. Well sir, earlier in this deposition we talked
18 about Sir Charles Ellis; right?

19 A. Yes, we did.

20 Q. And he was a BATCo board of directors member;
21 wasn't he?

22 A. You know, I'm not quite sure we know. I
23 think -- I think the conclusion was that he -- he was
24 certainly a senior scientist, and whether he was a
25 board member of -- of BATCo at the time or whether he

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1 was an external consultant on a -- on a sort of
2 permanent arrangement working within Brown -- BATCo,
3 I just don't know. But I think we --

4 I'm certainly prepared to say he was -- he was a
5 senior scientist in -- in BATCo at the time.

6 Q. All right. And you understand that Dr. -- or
7 sorry.

8 You understand that Sir -- Sir Charles Ellis
9 commissioned the work that was done at the Battelle
10 Institute on the effect of nicotine on the body on
11 behalf of BATCo; right?

12 A. That's my understanding, yes.

13 Q. And he met with scientists from Geneva, from
14 Battelle Institute, to discuss that work; didn't he?

15 A. That, I would imagine, happened, but I really
16 can't testify to that directly.

17 Q. Well sir, you're aware of the fact that Sir
18 Charles Ellis believed cigarette smoking was
19 addictive; aren't you?

20 A. No, I don't believe he did think cigarette
21 smoking was addictive.

22 Q. Sir, showing you what's previously been marked
23 as Plaintiffs' Exhibit 4512 in this litigation, this
24 is a document that says at the end signed Charles
25 Ellis; right?

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- 1 A. That's what it says.
- 2 Q. And for the record, Exhibit 451 is Bates
- 3 numbered 301083862; right?
- 4 A. Yes.
- 5 Q. You've seen this before; haven't you, sir?
- 6 A. I don't recollect seeing it before, no. And
- 7 just for the record, to make sure that it's clear, it
- 8 wasn't signed; it's actually the word "[Signed]
- 9 Charles Ellis" appears as opposed to any signature by
- 10 Charles Ellis.
- 11 Q. All right. This document is dated November
- 12 15th, 1961; right?
- 13 A. Correct.
- 14 Q. And it references a meeting in London with Dr.
- 15 Haselbach, 8th/9th November 1961; right?
- 16 A. That's what it says.
- 17 Q. Why don't you take a moment and review the
- 18 document.
- 19 A. Thank you.
- 20 Well I have now read it, although I don't fully
- 21 understand it.
- 22 Q. All right. Exhibit 451 is a memo concerning a
- 23 meeting that Sir Charles Ellis had had with Dr.
- 24 Haselbach of Battelle; right?
- 25 A. That seems to be what it's about, yes.

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1 Q. All right. And the --

2 At the meeting, Ellis and Haselbach reviewed the
3 progress of various research reports that Brown &
4 Williamson and BATCo were funding; right?

5 A. Seems to refer to that again, but I have never
6 seen the document before, so I really haven't made
7 any inquiries into it.

8 Q. There is some reference in the first paragraph
9 to MAD HATTER Roman III and HIPPO; right?

10 A. (Nodding.)

11 Q. You understand --

12 You have to answer out loud, sir.

13 A. Yes.

14 Q. And you understand that those were the code
15 names of projects that Battelle Laboratories was
16 doing on behalf of Brown & Williamson and BATCo;
17 right?

18 A. Well I think I've already testified that I heard
19 of HIPPO I and II before, but not MAD HATTER. This
20 is the first I've actually seen a reference to MAD
21 HATTER.

22 Q. There's also reference to ARIEL; right?

23 A. I know something about ARIEL, yes.

24 Q. Project ARIEL was a project to develop a
25 nicotine-delivery device that was not a cigarette;

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1 right?

2 A. That's broadly my understanding. It was --

3 Yes, I think that's fair to say.

4 Q. And this document --

5 A. It's a fair description.

6 Q. I'm sorry.

7 A. I said it's a fair description.

8 Q. And this document, Exhibit 451, talks about some

9 conclusions that were drawn as a result of the work

10 that Battelle had been doing; right?

11 A. I didn't quite read it that way. I read it more

12 as some sort of speculation as to where research was

13 coming from and where it might be leading to.

14 Q. Well at the top of page two doesn't it say, "The

15 experiments of Hippo have led to a great increase in

16 our knowledge of the effects of nicotine,

17 anti-diuretic, anorexic, release of fat mobilising

18 hormones, effects on the thyroids and gonadotropic

19 hormones?"

20 A. That's what it says.

21 Q. And it goes on to say later in that paragraph,

22 quote, "Smoking demonstrably is a habit based on a

23 combination of psychological and physiological

24 pleasure, and it also has strong indications of being

25 an addiction." Doesn't it, sir?

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1 A. It says those words. But actually there are
2 some words earlier in the paragraph that I think led
3 me to characterize this document as -- in the way I
4 did in -- in my answer to your last question.

5 Q. Now --

6 MR. McCORMICK: Could he finish the answer,
7 please, Ms. Wivell?

8 A. Because there are words here that say,
9 "Quantitative detail is lacking and much of the
10 information is preliminary...." So that's what was
11 leading me to believe that this was an interim sort
12 of analysis of what they were.

13 Q. And the last paragraph on this page goes on to
14 talk about reasons for proposing further research in
15 Project HIPPO; right?

16 A. Yes, into the "pleasurable physiological effects
17 and the causes of addiction" it says.

18 Q. All right. Just so the record is clear, it says
19 at the -- in the last paragraph, "These are the
20 reasons for proposing that Project Hippo be continued
21 with the particular object of finding the causes of
22 the pleasurable psysiological effects and the causes
23 of addiction." Right?

24 A. Those are the words being used, yes.

25 Q. And it also reports in this document that Dr.

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1 Haselbach believed that cigarette smoking was an
2 addictive habit; right?

3 A. I believe that had been one of the reports that
4 we had received from Battelle, this was a hypothesis
5 that -- that was -- this gentleman had formed.

6 Q. Well this gentleman was doing the work on behalf
7 of BATCo and B&W; wasn't it -- wasn't he?

8 A. I frankly don't know. I mean Haselbach is a
9 name I -- I haven't -- I'm not previously familiar
10 with, but he may well have been the contact point
11 between ourselves and Battelle. I don't know whether
12 he was actually the researcher.

13 Q. And it also talks about withdrawal symptoms in
14 this document; doesn't it, sir, that smokers go
15 through after they quit smoking?

16 A. Could you point me to where it says that? I
17 think I read words similar to that somewhere.

18 Q. All right. The last paragraph on the
19 second-to-the-last page.

20 A. Last paragraph.

21 Yes. Well that's what I -- I -- I read those
22 words in the last paragraph, actually I made a little
23 line next to it, because I think it kind of supported
24 what I was saying, that it was a hypothesis.

25 Q. And --

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1 A. It says, "In developing this theme it appeared
2 quite clearly that the matter was really concerned --
3 we were really concerned with was to define more
4 narrowly the smoking habit and what constitutes
5 addiction."

6 Q. And -- and it goes on to say, "Haselbach seemed
7 to think quite reasonably well of the description I
8 had given of addiction, bracket, October" -- or "25th
9 October, 1961, bracket, but he himself felt that an
10 alternative view could be to distinguish between the
11 hold that cigarette smoking had on the smoker and
12 addiction, that is, the intensity of the withdrawal
13 symptoms." Right?

14 A. Which again, I think, rather confirms my view,
15 if I may say so, that Sir Charles Ellis held a
16 different view as to what he would define as
17 addiction.

18 Q. Well, sir, you're aware that Sir Charles Ellis
19 did believe that cigarette smoking was addictive and
20 went on to try and find out why; right?

21 A. No, I don't accept that. I don't think that was
22 his working hypothesis.

23 Q. Sir, showing you what's previously been marked
24 as Plaintiffs' Exhibit 514, this is a document that
25 begins with the Bates number 301083820; right?

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1 A. Well the -- the numbers are missing off the end
2 of this copy, but I have to accept that.

3 Q. All right. It's a private and confidential memo
4 dated 13th February, 1962; right?

5 A. That's right.

6 Q. Have you seen this document before, sir?

7 A. Can I just review it?

8 Q. Certainly.

9 A. I don't believe I have seen it before.

10 Q. On the page that ends with Bates number 824,
11 it's signed by Sir Charles Ellis; isn't it?

12 A. 824.

13 Yes, that has a signature.

14 Q. All right. Why don't you take a moment and read
15 it, please.

16 A. The whole document?

17 Q. Yes, sir.

18 A. Very good.

19 I'm afraid this is my last page and I can't read
20 it. Is your last page better?

21 MR. McCORMICK: Let me just say on the
22 record the document the witness has just been asked
23 to read is a single spaced, what appears to be a
24 16-page document, but the last page of the document
25 as marked, which shows just a little portion on the

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1 right-hand side of the 16th page which was Bates
2 stamped numbered 301083835, has only been reproduced
3 here in part and can't be read. I don't know if you
4 have another copy of the exhibit.

5 MS. WIVELL: Why don't I share with you my
6 copy of the exhibit.

7 THE WITNESS: I think it's the last two
8 pages, Marti.

9 MS. WIVELL: Okay.

10 THE WITNESS: It's 834 and 835.

11 Thanks.

12 MS. WIVELL: Certainly.

13 (Discussion off the stenographic record.)

14 Q. Sir, you have my copy. I'm going to have to ask
15 that you return it.

16 A. I'm still reading the last page. I'm sorry.

17 Q. Oh, I beg your pardon. I'm sorry.

18 A. There were two pages that were photographed
19 together.

20 Q. I thought you were through.

21 MR. McCORMICK: Can I just see those
22 pages?

23 THE WITNESS: Yes.

24 As long as you aren't going to ask me about the
25 last two pages, I think we're in good shape.

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1 BY MS. WIVELL:

2 Q. Sir, you've now had the opportunity to read

3 Exhibit 514; right?

4 A. Yes, correct.

5 Q. All right. And this is a document that Sir

6 Charles Ellis wrote in February of 1962.

7 A. It appears so, yes.

8 Q. And he discusses in this memo the research that

9 had already been done by Battelle on behalf of the

10 BAT Group looking at the subject of the effect of

11 nicotine on the body; right?

12 A. Yes. That's partly what it was about, yes.

13 Q. All right. And he also talked about future

14 research that he hoped would be done on the subject

15 in the future; right?

16 A. Nicotine was very dear to his heart, and this

17 was an area where he wanted a lot of research to be

18 undertaken, that's right.

19 Q. And in Exhibit 514 he reviews the research that

20 already had been undertaken and summarizes it;

21 doesn't he?

22 A. I sus --

23 Yes, it appears that this is his summary of it

24 so far, although it is not signed by him.

25 Q. Well it is signed on the fifth page; isn't it,

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1 sir?

2 A. No, I'm sorry, I'm saying the attachments --

3 I'm prepared to accept it is his writing, but it
4 doesn't say so on the face of the document.

5 Q. Well his signature does appear on page five.

6 A. On the introduction to it, yes, it does, that's
7 right.

8 Q. Just so we're clear, the research that's
9 discussed in Exhibit 514, that's the research you
10 previously referred to as bad research earlier in
11 this deposition; right?

12 A. I think I also withdrew the reference "bad"
13 because I think it's unfair to label the Battelle
14 Institute as -- as generating bad research. It
15 really was research that wasn't publishable, that was
16 what I understood it to be, which doesn't necessarily
17 equate to bad research. I'm sure very good research
18 just won't find peer review support.

19 Q. Now sir, just so we're clear, though, the
20 research that's discussed in Exhibit 514, that's the
21 research that you were referring to when you made
22 that reference; right?

23 A. Yes, it was the reason I -- I indicated earlier
24 that this was not published, because independent
25 scientists said that they didn't think it was very

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1 well conducted.

2 Q. Move to strike as non-responsive.

3 Sir, just so we're clear, the research that's
4 discussed in 514 is what you were referring to when
5 we had that discussion of, quote, unquote, bad
6 research; right?

7 MR. McCORMICK: Object, it's been asked and
8 answered. And if you're asking him to characterize
9 his previous testimony, he's entitled to give you the
10 context of it, Ms. Wivell, so I would object to that
11 question as asked and answered.

12 A. And I -- I'd give you the same answer, if I may,
13 that this is the research I believe that was
14 undertaken by Battelle and which, when independently
15 reviewed by external scientists outside BATCo, it was
16 determined not to be of publishable quality.

17 Q. Well sir, would you turn to the page that ends
18 with Bates number 828.

19 A. Yes.

20 Q. There it says, "As a result of these various
21 researches we now possess a knowledge of the effects
22 of nicotine far more extensive than exists in
23 published scientific literature;" right?

24 A. Those are the words he used, yes.

25 Q. And it goes on to say, "It is indeed so

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1 extensive and represents so much new thought that it
2 is not easy to condense the work of these several
3 reports and working papers without the risk of
4 over-simplification;" right?

5 A. Well if these are the words of Sir Charles
6 Ellis, it does seem that he was quite excited about
7 where things were headed, that's right.

8 Q. And then on the last page, when I lent you mine,
9 you saw that he says, "For good reasons the results
10 of Battelle's work have been kept at a high level of
11 secrecy;" right?

12 A. I read those words, yes.

13 Q. All right. Now sir, one of the things that Sir
14 Charles says in here is that future research is
15 needed so we can know what constitutes the hold of
16 smoking, quote, "that is, to understand addiction;"
17 right?

18 A. I don't -- I don't see those. Perhaps you could
19 refer me to them -- or excuse me, them to me.

20 Q. Could you turn to the page that ends with number
21 826.

22 A. 826.

23 Q. And there do you see where it says in the last
24 paragraph, "What we need to know above all things is
25 what constitutes the hold of smoking, that is, to

1 understand addiction?"

2 A. Those are words the author uses.

3 Q. Now sir, do you understand that there was a
4 research conference which was held in 1962 at which
5 Sir Charles discussed his view of whether cigarette
6 smoking was addictive?

7 A. I'm sorry. Could you just repeat that question?

8 Q. Yes.

9 Do you understand that in 1962, BATCo held a
10 research conference at which Sir Charles discussed
11 his opinion about whether cigarette smoking was
12 addictive?

13 A. Yes, I believe there was a research conference
14 in Southampton at that time.

15 Q. And he references that on the last page of
16 Exhibit 514; doesn't he?

17 A. He says there's going to be a conference and
18 this is something we perhaps ought to consider
19 discussing at the conference, that's right.

20 MS. WIVELL: All right. Why don't we take
21 a lunch break.

22 THE REPORTER: Off the record, please.

23 (Luncheon recess taken at 12:06 o'clock

24 p.m.)

25

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:28 o'clock
3 p.m.)

4 BY MS. WIVELL:

5 Q. Sir, I've had the court reporter hand you what's
6 previously been marked as Plaintiffs' Exhibit 315.
7 This is a document that begins with the Bates number
8 110070785; right?

9 A. Yes, correct.

10 Q. And Exhibit 315 is entitled "RESEARCH
11 CONFERENCE, SOUTHAMPTON, 1962;" right?

12 A. Yes. That's what it says.

13 Q. Would you turn, please, to the page that ends
14 with Bates number 790.

15 A. 790. Yes.

16 Q. Do you have it?

17 A. Uh-huh.

18 Q. All right. At the top of the page that ends
19 with Bates number 790 is the heading "THE SMOKING AND
20 HEALTH PROBLEM, Sir Charles Ellis;" right?

21 A. Yes.

22 Q. Now if we turn to the next page, the first
23 complete paragraph begins, "Lastly, smoking is a
24 habit of addiction that is pleasurable...." Correct?

25 A. That's what the words say, yes.

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1 Q. All right. And you understand that this was a
2 presentation that Sir Charles Ellis was giving at
3 this research conference in Southampton in 1962?

4 A. I understand these are --

5 What I take these to be are the notes of what
6 was said. I don't think they're actually the words
7 he -- yeah, I mean not his -- not his speech I don't
8 think. Is it?

9 Q. Well do you know for a fact whether or not this
10 is an accurate representation -- sorry, an accurate
11 transcription of what was said?

12 A. I'm afraid I have no i -- no way of knowing
13 that. I'm prepared to accept for the sake of this
14 discussion that it is, but I have no way of knowing
15 it personally.

16 Q. Now sir --

17 I'm sorry, I didn't mean to interrupt.

18 Now sir, if you turn to the third page of
19 Exhibit 315, we see a list of delegates; correct?

20 A. Sorry, which -- which one again? Which Bates
21 number?

22 Q. The third page.

23 A. Ah, yes, I have it.

24 Q. All right. And we see that several people
25 attended this conference from the U.S.A.; right?

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- 1 A. Yes, it appears so.
- 2 Q. And one of them was -- is Dr. Esterle; right?
- 3 A. That's correct.
- 4 Q. And he's still at Brown & Williamson in the R&D
- 5 department; isn't he?
- 6 A. Is he? I really don't know. Wasn't aware of
- 7 that.
- 8 Q. All right. Another person who attended was Dr.
- 9 R. B. Griffith; right?
- 10 A. R. B. Griffith is referenced here, yes.
- 11 Q. All right. And Dr. Griffith had a relationship
- 12 with Brown & Williamson; didn't he, sir?
- 13 A. Again, I'm afraid I really don't know.
- 14 Q. All right.
- 15 A. Can't speak to that.
- 16 Q. You don't know whether he was an employee or
- 17 not?
- 18 A. I'm afraid I don't.
- 19 Q. Do you know if he developed the Griffith filter?
- 20 A. I have heard reference to the Griffith filter,
- 21 but --
- 22 I am sure it probably is, given that he was an
- 23 attendee at this conference; that might be the same
- 24 Griffith. But I have no way of knowing, I'm afraid.
- 25 Q. Now sir, are you aware that individuals within

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1 Brown & Williamson have referred to cigarette smoking
2 as an addictive activity?

3 A. Sorry. Employees of Brown & Williamson, was
4 that your reference?

5 Q. Yes, sir.

6 A. I can imagine that the word, you know, has been
7 used on occasions by individuals in Brown &
8 Williamson. I wouldn't be surprised by that.

9 Q. And sir, you've seen references in documents to
10 that; haven't you, to the fact that cigarette smoking
11 was addictive?

12 A. I can't recall any documents off the top of my
13 head, but I may have been.

14 (Discussion off the stenographic record.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's previously been marked
17 as Plaintiffs' Exhibit 755. This is a document that
18 bears the Bates number 680096095; right?

19 A. That's correct.

20 Q. And it says at the top "SECONDARY SOURCE
21 DIGEST;" right?

22 A. Yes.

23 Q. Now would you please read to yourself the first
24 two paragraphs that appear under the heading
25 "MARKET -- MARKETING PLANNING APPROACH."

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1 A. I will indeed, but I -- I must say this again is
2 a very difficult copy to read. See if I can do it.

3 I've read the first two paragraphs.

4 Q. All right. According to this -- the -- I'm
5 sorry, strike that.

6 According to the first two paragraphs of Exhibit
7 755, this particular document was pulled together
8 from a number of different sources; right?

9 A. I honestly don't know what the damn -- what this
10 document is, what its origins are. I have never seen
11 it before, and I'm afraid I really can't cast much
12 light on it.

13 Q. All right.

14 A. But I'll try to interpret the first two
15 paragraphs for you if you wish.

16 Q. Well sir, it says in the first paragraph, "Key
17 articles and reports were furnished by R&D on the
18 subject of the psych -- physiological" -- I'm
19 sorry -- "psycological and physiological aspects of
20 smoking;" right?

21 A. That's what it says.

22 Q. And it goes on to talk about excerpts from
23 reports, and then it gives a number by D. J. Wood,
24 "Why Do People Smoke," and several other sources,
25 "have been used and much subjectivity was involved in

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1 culling out what -- what was thought to be the more
2 usable data;" right?

3 A. Again that's what the paragraph says, but where
4 it's from I have no idea.

5 Q. All right. Would you turn to the second page of
6 this document.

7 A. Uh-huh.

8 Q. Would you read the first paragraph to yourself,
9 please.

10 A. Yes, I've read it.

11 Q. All right. It talks about withdrawal symptoms
12 that begin when nicotine starts leaving the system;
13 doesn't it, sir?

14 A. That's what it talks about, yes.

15 Q. All right.

16 A. "Withdrawal starts," it says, which I assume
17 means withdrawal symptoms, but I don't think it
18 actually says "withdrawal symptoms" in terms.

19 Q. Now sir, do you know whether Brown & Williamson
20 has studies in its files that have not been published
21 that show that cigarette smoking causes withdrawal
22 symptoms?

23 A. I am not aware of any documents specifically.

24 Q. So if there are any, you just don't know about
25 them; right?

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1 A. I'm not aware of any documents specifically.

2 Q. Well sir, has Brown & Williamson ever published
3 any research in its files that it has done either
4 alone or in conjunction with BATCo on the subject of
5 the effect of nicotine on the brain?

6 A. I honestly can't answer that question. We may
7 have done. I don't know.

8 Q. You can't direct us to any ads that were taken
9 out that -- where Brown & Williamson disclosed the
10 results of work that it has -- may have done on the
11 effect of nicotine on the brain.

12 A. As I said, we may have done so, but I just don't
13 know.

14 Q. Sir, showing you what's previously been marked
15 as Plaintiffs' Exhibit 785, this is a document from
16 H. D. Steele to M. J. McCue entitled "Future Consumer
17 Reactions to Nicotine." Right?

18 A. Appears to be, yes.

19 Q. All right. And it says in the second
20 sentence -- in the second paragraph, "Very few
21 consumers are aware of the effects of nicotine, i.e.,
22 its addictive nature and that nicotine is a poison."
23 Right?

24 A. Those words he used in the second paragraph.

25 Q. Did Brown & Williamson ever take out any ads

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1 that informed the public that nicotine was addictive?

2 A. As I said, I can't speak to whether we took out
3 ads specifically, although -- whether -- whether we
4 discussed nicotine in the public arena. But I
5 don't --

6 I have to say, before I answer that question, I
7 don't know who Mr. Steele is or who Mr. McCue is.
8 Are you telling me they are former employees, or
9 current employees even, of Brown & Williamson?
10 Because I'm not familiar with either name.

11 Q. Well sir, I get to ask the questions in the
12 deposition, you get to answer them, but I will tell
13 you that it has been represented to me that they are
14 former Brown & Williamson employees.

15 A. Okay. Well that --

16 If I may start by answering your question by
17 saying I'm not aware of them, I don't know what
18 they're referring to in this note.

19 Q. All right. Did Brown & Williamson ever make any
20 public statement where it informed the public that
21 cigarette smoking was addictive?

22 A. Well our view is that the -- you know, cigarette
23 smoking as defined -- or addiction, rather, as
24 defined by the Surgeon General in 1964, he made a
25 clear distinction between consuming stuff such as

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1 coc -- cocaine and heroin and the stimulant effect of
2 things like nicotine and -- and coffee, and I think
3 he -- he made a sensible distinction and it's one
4 that we -- I personally think is -- is appropriate.
5 So why we would go forward and say that cigarettes --
6 and advise the public that our opinion was that
7 cigarettes were addictive where that is not the --
8 the view of the corporation, I don't know.

9 Q. Well sir, I'm going to move to strike as
10 non-responsive. I don't recall asking you about what
11 the Surgeon General did. I'm asking you what Brown &
12 Williamson did.

13 A. Uh-huh.

14 Q. Did Brown & Williamson ever make any kind of a
15 public statement admitting to cigarette smokers that
16 nicotine was addictive?

17 A. Well as I've just tried to indicate in response
18 to your earlier question, as it's not the
19 corporation's position that cigarette -- the word
20 "addiction," even though it may end up being a
21 somewhat semantic argument, is appropriate to use in
22 relation to nicotine, I -- I don't -- I can't
23 therefore see why we would be out there telling the
24 public something contrary to what we believed.

25 Q. Sir, who is Lance Reynolds?

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1 A. Lance Reynolds is a former employee of, I
2 believe, BATCo, and I think he might have been a
3 consultant to Brown & Williamson.

4 Q. Sir, wasn't he the former vice-president of
5 research -- research and development for Brown &
6 Williamson?

7 A. I think he had a title within the R&D department
8 for a while. I honestly haven't traced Lance
9 Reynolds' career either with BATCo or with Brown &
10 Williamson in any great detail, but I certainly know
11 he's a former researcher.

12 Q. All right. Well sir, are you aware that
13 Brown -- I'm sorry, strike that.

14 Are you aware that Mr. Reynolds took part in a
15 meeting that discussed how to market an addictive
16 product in an ethical manner in relationship to a low
17 tar/high nicotine cigarette?

18 A. Was I aware that he had taken part in -- in
19 what? I'm sorry.

20 Q. Let me rephrase the question.

21 Were you aware that Mr. Reynolds took part in a
22 meeting where he and others discussed how to market
23 an addictive product in an ethical manner in the
24 context of a low tar/high nicotine -- high/nicotine
25 cigarette?

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- 1 A. No, I'm not aware of that.
- 2 Q. Sir, showing you what's previously been marked
3 as Plaintiffs' Exhibit 4458, this is a document that
4 bears the Bates number 777125397 on its first page;
5 right?
- 6 A. That's correct.
- 7 Q. All right. This is a document of a meeting that
8 took place July 28th, 1997 -- I'm sorry, 1977, at B&W
9 in Louisville; right?
- 10 A. I don't think it can be, because the -- the
11 stamp here that says August 4th.
- 12 Q. Well sir, if we look at -- over on the
13 right-hand column, doesn't it say "DATE OF
14 CONFERENCE: July 28, 1977?"
- 15 A. I'm not sure what the July -- August 4th date
16 refers to then. But you're right, the date of the
17 conference says July 28th, 1977, I agree.
- 18 Q. And then under that it says "PLACE OF
19 CONFERENCE: B&W/Louisville?"
- 20 A. That's right.
- 21 Q. And right above the date it says "CLIENT: Brown
22 & Williamson?"
- 23 A. Yes.
- 24 Q. And at the top it says "CONFERENCE REPORT;"
25 doesn't it?

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1 A. Below the words Hawkins, McCain & Blumenthal,
2 Inc., ADVERTISING," whatever that means, yes.

3 Q. All right. Now you understand that from time to
4 time Brown & Williamson hires advertising agents?

5 A. Indeed, yes.

6 Q. They still do today; right?

7 A. We do.

8 Q. And is Hawkins, McCain, Blumenthal, Inc. still
9 an advertising agency for Brown & Williamson?

10 A. I have never heard of them before, so I have to
11 say no.

12 Q. All right. Now it says that certain people
13 represented the client; right?

14 A. I'm not sure. Where do you see that?

15 Oh, I see. Yes, I do indeed. Yes, you're
16 right. Carry on.

17 Q. And it says L. Lewis, L. Glass and L. Reynolds
18 represented the client Brown & Williamson.

19 A. That's right.

20 Q. All right. Have you ever seen this document
21 before, sir?

22 A. No, I don't believe I have.

23 Q. Why don't you take a moment and read it.

24 A. Thank you.

25 Well I've read it. It's clearly not a Brown &

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1 Williamson document. But apart from that, please
2 carry on.

3 Q. Well sir, let me ask you something before we
4 turn our attention back to Exhibit 4458.

5 You said earlier, just a few moments ago, and
6 I'm looking at the screen, "I can't see where" -- or
7 I'm sorry. "I can't see why we would be out there
8 telling the public something contrary to what we
9 believed." Do you recall saying that?

10 A. I believe I said something along those lines in
11 relation to you asking me why we hadn't taken -- paid
12 for advertising to alert the consumers of the fact
13 that we believed that smoking was addictive.

14 Q. Now sir, let me ask you this: Would it be
15 appropriate for Brown & Williamson to say something
16 in-house and say something to the contrary to the
17 public?

18 A. Would it be appropriate to say something
19 in-house and something contrary to the public.

20 That depends very much on the conversations
21 in-house. I mean if the conclusion of the
22 corporation as advised by its scientists was that
23 smoking was addictive, I think there is a case we
24 should perhaps have gone out there and said that it
25 was. But my concern is that there is no such

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1 conclusion within Brown & Williamson. The use of the
2 word "addiction" and "addictive" strays into the
3 semantics. I agree the man in the street probably
4 uses those words frequently in relation to tobacco
5 and in relation to other products, but it's not my
6 belief that it's an appropriate word to use in
7 relation to -- to tobacco consumption largely because
8 people can and do quit.

9 Q. Now --

10 A. And that's certainly a fact that we've known
11 internally for some time, and it's a fact that I
12 think the general public knows.

13 Q. Sir, you would agree that Lance Reynolds was a
14 scientist at Brown & Williamson who was involved in
15 the issue of trying to develop low tar/high nicotine
16 cigarettes; right?

17 A. Directly I don't know that, but I'm sure that
18 might have been one of the areas he was
19 investigating.

20 Q. And this particular document, Exhibit 4458,
21 concerns the development of such a cigarette; doesn't
22 it, sir?

23 A. I don't know what it concerns. It's a most
24 peculiar a document. It's not something, as I said,
25 that was prepared by Brown & Williamson. It appears

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1 to have been prepared by a firm of outside
2 advertising agencies. So I think its scientific
3 merit is probably zero.

4 Q. Well sir, it clearly says at the top "(B&W)
5 PROTECTED BY MINNESOTA TOBACCO LITIGATION PROTECTIVE
6 ORDER;" right?

7 MR. McCORMICK: Objection, Ms. Wivell. You
8 know well, very well what that means. That means
9 that it was produced out of the files of Brown &
10 Williamson and nothing else.

11 MS. WIVELL: Thank you, counsel. Did --

12 Q. Do you agree with what he just said?

13 A. Do I agree that it's irrelevant that the
14 document has "(B&W) PROTECTED BY MINNESOTA TOBACCO
15 LITIGATION PROTECTIVE ORDER" at the top of the page?

16 Q. No, sir, that it -- this document was produced
17 out of the files of Brown & Williamson.

18 A. I have no idea where it originated from, but you
19 have it in your possession and I assume that probably
20 one of the defendants in the case made it available
21 to you in discovery. But I have no idea where it
22 originates from.

23 Q. Well it describes a meeting that took place
24 between Brown & Williamson personnel and personnel of
25 this particular advertising agency; didn't it?

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- 1 A. It appears to -- to reflect that, yes.
- 2 Q. All right.
- 3 A. But as I said earlier, it's not a document that
- 4 I've seen before and it clearly was not authored by
- 5 Brown & Williamson.
- 6 Q. Well sir, it concerns a meeting that took place
- 7 with Brown & Williamson personnel; doesn't it?
- 8 A. I'm not disputing that, but I have no direct
- 9 knowledge of it. So I have no direct knowledge of
- 10 the meeting, no direct knowledge of this particular
- 11 advertising agency or the project underlying it. So
- 12 I'm trying to help you, but I really don't have a lot
- 13 of information to help you with.
- 14 Q. All right. So let's take a look at what it
- 15 says. It says here the purpose was "To receive and
- 16 participate in an R&D briefing on the LTS product in
- 17 three major areas;" right?
- 18 A. That's what it says.
- 19 Q. And the first one is "Pharmacology effects;"
- 20 right?
- 21 A. Correct.
- 22 Q. And if we go to the second page we see it is
- 23 entitled "LTS SYNECTICS." Is that the word,
- 24 "SYNECTICS?"
- 25 A. Seems to be "SYNECTICS," but what that word

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1 means I don't know either.

2 Q. And it says under that, "DEVELOP A LOW TAR HIGH
3 NICOTINE CIGARETTE;" right?

4 A. That's what it says.

5 Q. And one of the issues on a -- I'm sorry, strike
6 that.

7 Then there is a wish list; isn't there, sir?

8 A. It says --

9 There's a heading that says "GOALS/WISHES."

10 Q. And it says under that "How to, colon, Wish we
11 could;" right?

12 A. That's what it says.

13 Q. And it says as the second-to-the-bottom item,
14 quote, "market an ADDICTIVE PRODUCT in an ETHICAL
15 MANNER;" doesn't it, sir?

16 A. The document says that certainly.

17 Q. And of course you weren't at this meeting; were
18 you, sir?

19 A. No.

20 Q. And you haven't read Mr. Reynolds' testimony
21 about this; have you?

22 A. No, I haven't.

23 Q. All right. Now isn't it a fact that it was well
24 known within Brown & Williamson that cigarette
25 smokers were addicted?

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- 1 A. No, it wasn't.
- 2 Q. Sir, showing you what's previously been marked
- 3 as Plaintiffs' Exhibit 4455, this is a document that
- 4 bears the Bates number 679040686; right?
- 5 A. It appears to, although it's rather unclear.
- 6 Q. All right. The date of this document is July
- 7 1st, 1983; right?
- 8 A. That's right.
- 9 Q. And this particular document says at the top,
- 10 "BROWN & WILLIAMSON TOBACCO CORPORATION, INTERNAL
- 11 CORRESPONDENCE." Right?
- 12 A. That's right.
- 13 Q. All right. Would you please read the first two
- 14 pages of this document to yourself.
- 15 A. Thank you.
- 16 I have finished reading it.
- 17 Q. All right.
- 18 A. The first two pages.
- 19 Q. Exhibit 4455 concerns Raleigh and Belair
- 20 cigarettes; doesn't it?
- 21 A. Yes. It's talking about motivations for
- 22 consumers of those brands and why they might choose
- 23 to collect coupons.
- 24 Q. All right. And just so we're clear, Raleigh and
- 25 Belair are two Brown & Williamson brands of

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1 cigarettes.

2 A. Yes, they are.

3 Q. And one of the things that is said concerning
4 why -- I'm sorry, strike that.

5 One of the things that is said concerning
6 Raleigh and Belair smokers in this document is that
7 Raleigh and Belair smokers are addicted to smoking;
8 right?

9 A. Well it --

10 Make sure we know the context in which that's
11 being said. This is apparently a document from the
12 marketing department, and I think I said earlier that
13 certainly the man in the street -- may be the man in
14 the street who works for Brown & Williamson -- may
15 use the word, you know, "addicted to smoking"
16 colloquially, not meaning it in the scientific
17 sense. This is a marketing department document, not
18 an R&D document.

19 Q. All right. Well sir, let's take a look at an
20 R&D document from BATCo and see what BATCo scientists
21 were saying about smoking.

22 I'm going to direct your attention to what's
23 previously been marked as Exhibit 611. Exhibit 611
24 begins with the Bates number 105392223; right?

25 A. Right.

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1 Q. And this is a document that begins with a cover
2 memo from M. Oldman, directed to Dr. S. J. Green;
3 right?

4 A. Yes, that's right.

5 Q. Okay. Let's start off by talking about who Dr.
6 Green was. You understand that Dr. Green was head of
7 research and development at BATCo; right?

8 A. He was head of research and development at
9 BATCo, that's correct, yes.

10 Q. He was also -- also a BATCo board member; wasn't
11 he, sir?

12 A. I believe he was. I'm not sure for how long,
13 but yes, he was a BATCo board director at one stage I
14 believe.

15 Q. And Dr. Oldman was a Ph.D. psychologist; wasn't
16 he, sir?

17 A. Well you're better acquainted with Dr. Oldman
18 than I am. I wasn't aware of that.

19 Q. All right. Well you understand that Dr. Oldman
20 was a scientist who was employed at Group Research &
21 Development in Southampton; right?

22 A. I believe he was for a while, but I think
23 subsequently he moved into a management position.
24 But yes, I -- I know he -- he came from the R&D
25 function, that's right.

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1 Q. All right. And by the way, Group Research &
2 Development, that's the name -- the original name for
3 the research facility that BATCo ran at Southampton;
4 right?

5 A. To the best of my knowledge, that is the title
6 that has been used in relation to the research
7 facility at Southampton. But again, I think that's
8 right.

9 Q. Now would you take a moment and read the cover
10 page -- or read the first two pages, sir.

11 MS. WIVELL: Can we go off the record for a
12 moment, please.

13 THE REPORTER: Off the record, please.

14 (Discussion off the record.)

15 A. I've read it, yes.

16 Q. All right. Sir, the first page of Exhibit 611
17 is a cover memo which Dr. Oldman wrote in which he
18 refers to an attachment; right?

19 A. He refers to "model, hypotheses and methods" --
20 oh, hang on.

21 Yes, he told -- refers to the attachment
22 entitled "Smoker Motivation and Dependency."

23 Q. And if we turn to the second page, we see a memo
24 beginning "A NOTE ON SMOKER MOTIVATION AND
25 DEPENDENCY;" right?

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- 1 A. That's right.
- 2 Q. All right. And it goes on on that page under
- 3 the heading to give an introduction; doesn't it?
- 4 A. It does, yes.
- 5 Q. And it talks about smoker motivation running a
- 6 continuum from high motivation to smoke to low
- 7 motivation to smoke; right?
- 8 A. Yes. That must be what he means by models and
- 9 hypotheses on the -- on the preceding covering note.
- 10 Q. And at the end of the introduction Dr. Oldman
- 11 says, quote, "The latter motivation, however, more
- 12 closely resembles an urge or drive and might be
- 13 described as an addictive behaviour beyond cognitive
- 14 control and likely to be associated with
- 15 pharmacological dependency;" right?
- 16 A. Yes, those are the words he uses.
- 17 Q. Now sir, let me ask you this: Did Brown &
- 18 Williamson ever take out any kind of an ad or make a
- 19 public statement that told smokers that cigarette
- 20 smoking was a pharmacological dependency?
- 21 A. No, because that, as I understand it, is not a
- 22 determination that's been made by this paper, it's
- 23 merely a hypothesis as reflected in a cover note from
- 24 Mr. Oldman -- or Dr. Oldman.
- 25 Q. Well he actually goes on to say, "The model,

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1 hypotheses and methods which are described have
2 arisen from our first attempts to structure the
3 problem;" right?

4 A. That's right. And he says it may also be
5 premature to do so.

6 Q. I'm sorry, where does he say that?

7 A. He says "...as this note contains a number of
8 possible dubious assumptions, it may be that the
9 implied research proposals are premature." So I
10 don't think he's drawing any conclusions here.

11 MR. McCORMICK: Excuse me, just so the
12 record is clear, is it "possible dubious assumption,"
13 or "possibly dubious?"

14 THE WITNESS: Yes, "possibly dubious."
15 Sentence reads, "Insofar as this note contains a
16 number of possibly dubious assumptions, it may be
17 that the implied research proposals are premature."
18 So I -- I don't think he's drawing any conclusions
19 from the words you read me in the report he attaches.

20 Q. All right. But he goes on to say, "Our present
21 purpose, however, is to simulate, in further
22 discussions, the broadest consideration of the topic
23 and, perhaps, in that regard this particular
24 perspective will be of assistance;" right?

25 A. Indeed. I mean that's --

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1 Q. Now he doesn't say in the introduction that
2 the -- what he describes as addictive -- addictive
3 behavior likely to be associated with pharmacological
4 dependence, he doesn't say anywhere that that is a
5 possibly dubious assumption; does he?

6 MR. McCORMICK: Other than on the first
7 page?

8 MS. WIVELL: Well actually he doesn't say
9 that on the first page.

10 A. Well I think we're all arguing --

11 Q. Let me -- let me re-ask the question.

12 A. Okay.

13 Q. Now the introduction that Dr. Oldman wrote
14 doesn't say that his reference to addictive behavior
15 which is likely to be associated with pharmacological
16 dependency, he doesn't refer to that in the
17 introduction as a possibly dubious assumption; does
18 he?

19 A. I don't think he needs to, frankly, counselor,
20 because he's made that comment on the covering note.

21 Q. Well sir, I don't see anyplace in the first note
22 where he says that what he refers to as addictive
23 behavior that is likely to be associated with
24 pharmacological dependency is a possibly dubious
25 assumption.

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1 A. Well I think you're trying to argue that this
2 was something --

3 You asked me whether this was something we took
4 out a paid-for advertising to alert the American
5 public about, and I'm saying that is not a conclusion
6 that Dr. Oldman has reached in this paper, and it's
7 fairly self-evident from both the cover note and the
8 document itself.

9 Q. You've read the document, sir, in its entirety?

10 A. The page you asked me to read, I think it's
11 clear from that alone.

12 Q. Did you read this document in its entirety, sir?

13 A. Sir -- or madam, I've never seen this document
14 before.

15 Q. So you don't know to what Dr. Oldman is
16 referring when he refers to a number of possibly
17 dubious assumptions; do you, sir?

18 MR. McCORMICK: Is there another place in
19 the document you'd like to direct the witness, Ms.
20 Wivell?

21 MS. WIVELL: Objection, counsel. I think
22 that's completely inappropriate.

23 A. I haven't read the whole document, but I think
24 it's fairly self-evident that, as you pointed me to
25 that paragraph and as I read the cover note, this is

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1 entirely a document that is intended to be a
2 hypothesis, and the hypothesis which contains,
3 according to the very language of the cover note,
4 possibly dubious assumptions.

5 Q. Well sir, actually --

6 A. I've got no reason to suppose that is not one of
7 the possibly dubious assumptions to which he refers.

8 Q. Well he doesn't refer to anything dubious about
9 what he says on the second page of the document; does
10 he?

11 A. I don't think he needs to, as I've already
12 testified, because I think he mentions -- makes that
13 point fairly clear in the cover note.

14 Q. Actually what he says is, "Interacting with this
15 continuum is a dependency factor which is, in a
16 restricted sense, independent of other motivational
17 influences insofar as we can conceive of a smoker
18 with a high manifest (or ostensible) motivational
19 'desire' to terminate smoking...." He doesn't say
20 that is a dubious assumption; does he, sir?

21 A. I would just repeat what I've already said.

22 Q. Pardon me?

23 A. I would repeat what I've already said.

24 Q. Well I'm sorry. Does Dr. Oldman say that that
25 particular statement which I just read out of page

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1 two, does he call that a possibly dubious assumption?

2 A. Well counselor, he makes the point in the cover
3 note, so I'm assuming he's saying this is a very
4 tentative hypothesis that he's preparing to discuss
5 with Dr. Green, I assume.

6 Q. All right. Well let's turn to page two. Please
7 point out for the ladies and gentlemen of the jury
8 where he says this is a tentative assumption, sir.

9 A. Ma'am, I haven't --
10 I've just explained that he doesn't need to
11 because of the cover note.

12 Q. He doesn't say it; does he?

13 A. I repeat, I don't think he is required to say it
14 for me to make the conclusion -- to draw the
15 conclusion that I think is a totally logical and
16 sensible conclusion that this is not a piece of
17 evidence of a conclusive state of mind of a scientist
18 within the R&D department, this is a hypothesis that
19 he's discussing with his boss. Kind of seems fairly
20 self-evident.

21 Q. Now sir, do you --

22 Have you read Project WHEAT that he refers to
23 here?

24 A. No, ma'am, I haven't.

25 Q. All right. Have you read the studies that he

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1 refers to on page five that talk about a

2 pharmacological addiction to nicotine?

3 A. I haven't previously looked at page five, but

4 I'll now do so if you wish. Would you like me to

5 read it? Is that right?

6 Q. Well it refers to several studies. Have you

7 read those studies?

8 A. Could you point me to where it refers to those

9 studies?

10 Q. In the first paragraph on page five.

11 A. I think he's referring there, I understand it,

12 to a number of external studies. Is that what you

13 meant me to understand?

14 Q. Sir, have you read the studies that are referred

15 to there?

16 A. Well I can only find there's something called

17 McKennell. Is that a study? Wheat. There seems to

18 be a reference --

19 Is there a bibliography at the back here? Oh,

20 yes, there is.

21 Okay. So he's saying two, three, four, five,

22 six, seven, eight, nine, 10, 11 and 12.

23 Q. And by the way, those numbers you just read,

24 those are to footnotes in this paper; aren't they, or

25 to studies referenced at the end?

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1 A. I think they're referencing to a bibliography at
2 the very back of the page -- on page 17 and 18.

3 Q. Have you read those, sir?

4 A. Well if you will quickly allow me to --

5 I'm sure the answer to your question is no
6 because I don't think I've read any study on this
7 subject, but let me make sure quickly that's the
8 case.

9 These all appear, if I'm right, to be external
10 studies on the issue of nicotine conducted by
11 external scientists published anywhere from 1940
12 somewhere, '47 I thought I saw -- '45, right through
13 to presumably the current date of this memorandum,
14 whenever that was.

15 Q. Well sir, in that last answer --

16 A. And I haven't -- haven't read those documents.

17 Q. I'm sorry.

18 In that last answer, did you consider footnote
19 14, reference 14?

20 A. Allow me to have a look.

21 No, you're quite right. I apologize. There's
22 at least one document here that was an internal B.A.T
23 Co. document, I would imagine, because it refers to
24 GR&DC reports, and -- but all the others do appear to
25 be independently-published external reports.

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- 1 Q. Have you --
- 2 A. Is that correct?
- 3 Q. Have you read Project WHEAT, sir?
- 4 A. No, ma'am, I haven't. I've already testified I
- 5 believe I haven't read Project WHEAT, although I --
- 6 I've heard the name before.
- 7 Q. By the way --
- 8 A. I would have to be reminded what it meant.
- 9 Q. By the way, under reference 14, Project WHEAT,
- 10 parts one and two, it says "B.A.T RESTRICTED INTERNAL
- 11 G.R. & D.C. REPORTS;" doesn't it?
- 12 A. "B.A.T RESTRICTED INTERNAL G.R. & D.C. REPORTS,"
- 13 yes, that's indeed what it does say.
- 14 Q. And those reports have never been made public;
- 15 have they, sir?
- 16 A. Ma'am, I have absolutely no idea.
- 17 Q. Now sir, isn't it true that one of the reasons
- 18 that Brown & Williamson takes the stand that it has
- 19 with regard to whether cigarette smoking is addictive
- 20 is because it has been sued, along with other tobacco
- 21 manufacturers, in lawsuits where it was alleged that
- 22 cigarette smokers couldn't quit because of the
- 23 addictive nature of cigarettes?
- 24 A. I believe that's been allegations made in -- by
- 25 plaintiffs in lawsuits against various members of the

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1 tobacco industry. Certainly, yes.

2 Q. And isn't it true that certain research was not
3 done because of allegations in lawsuits that
4 cigarette smoking was addictive?

5 A. Research was not done?

6 Q. Yes, sir.

7 A. I'm not aware of any research that wasn't done.
8 I'm sure there may have been some. I don't suppose
9 we've covered the waterfront every time, but perhaps
10 you could help me.

11 Q. Okay. Well let me rephrase it so we can be a
12 little clearer.

13 Isn't it true that research on the
14 pharmacological effects of re -- of nicotine in
15 cigarette smoking was avoided because of allegations
16 that had been made in smoking-and-health cases in the
17 United States?

18 A. I'm not aware of that.

19 Q. Sir, showing you what's previously been marked
20 as Plaintiffs' Exhibit 453, this is a document that
21 begins with the Bates number 110083647; right?

22 A. That's correct.

23 Q. And Exhibit 453 is a strictly confidential
24 memorandum entitled "Notes on BAT/ITL Joint Meeting
25 held at Southampton on 25th October, 1978;" right?

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1 A. That's correct.

2 Q. All right. First of all, what's ITL?

3 A. Good question. Let me see if I can work with
4 that from who's present.

5 No, I can't. But it might refer to Imperial
6 Tobacco Limited of Canada.

7 Q. And Imperial Tobacco is a company in which B.A.T
8 Industries has a financial interest; right?

9 A. I believe we own 40 percent of the shares of the
10 holding company of the Imperial company known as
11 IMASCO, and yes, so --

12 And IMASCO, I believe, in turn has a hundred
13 percent of the ownership of Imperial.

14 Q. And that would explain why BATCo scientists were
15 meeting with scientists from ITL; right?

16 MR. McLAUGHLIN: Objection to the form.

17 A. I have no idea why B.A.T or BATCo scientists
18 were meeting with ITL. I'm making an assumption that
19 it was indeed Imperial Tobacco, but I'm sure you can
20 help me confirm that.

21 Q. All right. Would you take a moment and begin
22 reading from the second page on where it begins
23 "ICOSI."

24 By the way, how do you say that, sir?

25 A. Well I believe that's ICOSI, by -- or ICOSI,

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1 ICOSI, but I can't honestly recall what it refers

2 to. But I shall try to --

3 Q. Before we leave that point, --

4 A. -- try to remind myself.

5 Q. -- ICOSI eventually became INFOTAB; didn't it?

6 A. I honestly don't know.

7 Q. All right. Why don't you take a moment and read

8 the rest of the document.

9 MR. McCORMICK: Can I ask, Ms. Wivell,
10 here, you said "take a moment." This is a four-page,
11 single-spaced document. Do you really want the
12 witness to read every word of it, or can you direct
13 him --

14 Is there a part that you would direct him to? I
15 mean if you want him to read it, he will, but --

16 MS. WIVELL: I'd like him to read it.

17 THE WITNESS: From the beginning?

18 MS. WIVELL: No, from where it says
19 "ICOSI."

20 THE WITNESS: Oh, okay.

21 A. Well now I've come to read it, although if I may
22 just comment --

23 May I?

24 Q. Well I'd prefer that you answer my questions.

25 A. Well I --

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- 1 Q. Let me ask them.
- 2 A. I wanted to retract what I said earlier. I
- 3 don't think this is Imperial Tobacco of Canada, I
- 4 think this is Imperial Tobacco of the United Kingdom.
- 5 Q. All right. Let me go on, however.
- 6 You've now read Exhibit 453.
- 7 A. Yes. And it's full of names and references and
- 8 initials with which I have no familiarity, and I find
- 9 it very difficult to understand much of what was
- 10 being said, but I have now read it, yes.
- 11 Q. All right. At the bottom of the page there is
- 12 reference to an individual named Ed Jacob; right?
- 13 A. Yes. Ed Jacob, I believe, is a lawyer and has
- 14 represented, I think, Reynolds and possibly Brown &
- 15 Williamson at some point.
- 16 Q. All right.
- 17 A. As well as the CTR.
- 18 Q. He's an American lawyer; isn't he?
- 19 A. He's an American lawyer, that's right.
- 20 Q. All right. And it says here, "At ICOSI, Ed
- 21 Jacob advised a total embargo on all work associated
- 22 with pharmacology of nicotine and the benefits
- 23 conferred by smoking for three reasons;" right?
- 24 A. Uh-huh.
- 25 Q. And the first reason given is "The pending

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1 Californian lawsuit which indicated nicotine as an
2 addictive substance;" right?

3 A. That's what it says.

4 Q. It also says, "ICOSI had agreed with this policy
5 and Jacob had been sent to stop the Verband programme
6 on nicotine;" right?

7 A. Sorry, where are you seeing that?

8 Q. I'm on the last page under points one, two and
9 three.

10 A. Uh-huh.

11 Q. Now sir, what is the Verband?

12 A. I believe it's the equivalent of The Tobacco
13 Institute in Germany.

14 Q. All right. Sir, why would an American lawyer be
15 sent to stop Verband research?

16 A. I have no idea. I have no previous knowledge of
17 this note and I know nothing about the background or
18 any of the matters being discussed here. Although
19 there seems to be references to antitrust, which I
20 suppose, of course, was always of enormous concern to
21 the industry.

22 Q. Well sir, would German research on nicotine have
23 antitrust implications in the United States?

24 A. I honestly don't know. But I mean, it does
25 reference the fact that "T.I., C.T.R. and ICOSI were

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1 only exempt from anti-trust proceedings as long as
2 they were concerned with work on smoking associated
3 diseases." And the word "diseases" is underlined.
4 So clearly Ed Jacobs advised -- referenced antitrust
5 as one of the issues he was concerned about, if this
6 is a fair reflection of the advice of Ed Jacobs. And
7 I don't know whether that would apply to Verband or
8 not, frankly; I'm not a sufficient expert in these
9 matters.

10 Q. What did you understand ICOSI to be?

11 A. I've heard its name, and I'm afraid I really
12 can't help you. I have no knowledge -- detailed
13 knowledge of ICOSI.

14 Q. Well you understand that it's an international
15 organization -- or I'm sorry, strike that.

16 You understand it was an international
17 organization of companies involved in the manufacture
18 of tobacco products; right?

19 A. I --

20 It clearly was some sort of industry association
21 as far as I can recall, and it may have been
22 overtaken and renamed INFOTAB, but I'm afraid my
23 recollection of all that stuff is extremely hazy.

24 Q. All right. Now sir, isn't it true that one of
25 the reasons that Brown & Williamson -- strike that.

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1 You are aware of smokers who have continued to
2 smoke cigarettes even after they developed cancer;
3 right?

4 A. I've heard of that as happening, yes, in news
5 articles, et cetera, on the news -- in newspapers and
6 on the television.

7 Q. As a matter of fact, you have heard about people
8 who have been models for Brown & Williamson who Brown
9 & Williamson used in their ads who were smokers and
10 eventually developed cancer; right?

11 A. To be honest, I cannot recall directly whether
12 it was a Brown & Williamson model that I saw
13 referenced in a television program once, or whether
14 actually it was a Marlboro model, but I have seen
15 such allegation -- or not allegations, but
16 reference -- references made in media programs about
17 tobacco and smoking.

18 Q. Now sir, would it be appropriate for a smoker to
19 rely on the statements that Brown & Williamson makes
20 publicly about whether cigarette smoking is
21 addictive?

22 A. Well I seem to be going in a little bit of a
23 circle, but let me try to respond by saying that,
24 yes, certainly, I think if we make a statement on
25 issues relating to smoking and health, be it the

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1 question of smoking and addiction or any other
2 matter, I would certainly expect consumers at least
3 to recognize that we were making statements in good
4 faith and that we honestly believe them to be true.
5 Q. And it would be similarly appropriate for a
6 smoker to believe that statement and act accordingly;
7 right?
8 A. Well I expect a smoker to weigh whatever we say
9 with whatever else may be communicating -- being
10 communicated to him in the -- you know, either from
11 health authorities or by his doctor or by whoever --
12 whomever else he might choose to consult on issues.
13 Q. You mentioned doctors. Doctors have told you
14 that it would be best if you didn't smoke; right?
15 A. Have I ever been told that personally? I think
16 I probably have. On several occasions, yes.
17 Q. And you smoke nonetheless; right?
18 A. Well I certainly, like every other smoker I
19 suspect, I weigh the -- the benefits and -- and
20 decide whether I should just continue to smoke or
21 not. Currently I enjoy smoking and continue to
22 smoke.
23 Q. And sir, in weighing those benefits, you acted
24 reasonably; didn't you?
25 A. I hope to think I had.

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1 I think many of the diseases associated with
2 smoking are multifactorial, and it depends really
3 on -- on your lifestyle. I choose to try to keep fit
4 and -- and to eat good, green, leafy food and do
5 other things that are recommended by the medical
6 authorities. And smoking is my pleasure which I put
7 in there in the rest of the various ways that one
8 decides what lifestyle choices to make, and I hope
9 I'm -- I hope I've taken a reasonable decision,
10 certainly.

11 Q. Well sir, you would agree it would be similarly
12 appropriate for others who may have been advised by
13 their physicians to give up smoking to make the same
14 kinds of analysis you made and make the same
15 decision; right?

16 A. I don't know. I mean I think it very much
17 depends on each and every circumstance, but I think
18 individuals make decisions based on information
19 available to them.

20 Q. All right.

21 A. Most people, I think, would probably weigh a
22 doctor's advice very closely --

23 Q. Now --

24 A. -- and give it proper weight.

25 Q. Now sir, you would agree that you are in a

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1 nicotine business; aren't you?

2 A. I wouldn't accept that, no. I think smoking
3 is --

4 Part of the smoking experience is -- has to do
5 with nicotine, but I think that's very much only part
6 of it, and I think it's the taste and the -- the sort
7 of the whole social/cultural thing of holding a
8 cigarette and lighting it and enjoying the smoke.

9 Q. Hasn't it been known within the BAT Group for
10 more than 20 years that you are really in a nicotine
11 business?

12 A. That's not --

13 That's not a characterization of the tobacco
14 business I would accept. Clearly, nicotine is a --
15 an important part of the smoking experience, but it's
16 certainly not the whole thing. Otherwise, as you
17 rightly indicated earlier on, nicotine patches might
18 be an appropriate substitute for cigarettes, but
19 they're not.

20 (Plaintiffs' Exhibit 1486 was marked
21 for identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what has been marked as
24 Plaintiffs' Exhibit 1486, this is a document bearing
25 the Bates number 682012257; right?

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- 1 A. Yes.
- 2 Q. And it is a memo from R. R. Johnson entitled
- 3 "Comments on Nicotine;" right?
- 4 A. Correct.
- 5 Q. Now who was R. R. Johnson?
- 6 A. I'm afraid I never heard of the man.
- 7 Q. All right. Now according to the first paragraph
- 8 of this memo, it refers to a meeting held on June
- 9 30th to discuss past research on nicotine; right?
- 10 A. That's right.
- 11 Q. And it lists a number of individuals who were
- 12 present at this meeting, including Sir Charles Ellis
- 13 and Dr. Green; right?
- 14 A. Yes.
- 15 Q. Now there is a sentence underlined in the next
- 16 paragraph, right?
- 17 A. Yes, there is.
- 18 Q. And it starts out by saying, "Sir Charles
- 19 stated" -- I'm sorry, strike that.
- 20 It starts out by saying, "Sir Charles started
- 21 the meeting by saying that he had first brought out
- 22 the concept that we are in a nicotine rather than a
- 23 tobacco industry and then set up the above projects
- 24 to sell this concept to management." Right?
- 25 A. That's what it says.

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1 Q. And it goes on to talk about -- about work that
2 had been done, again referencing Project MAD HATTER;
3 right?

4 A. Let's see. I don't see MAD HATTER referenced
5 here, but --

6 Oh, yes, there it is. I beg your pardon.

7 "Project MAD -- MAD HATTER was originally
8 arranged" --

9 Yes. Okay. It does reference Project MAD
10 HATTER.

11 Q. And it talks about Project MAD HATTER and HIPPO
12 being done to stimulate discussion on the importance
13 of nicotine to the industry; right?

14 A. Where do you find that?

15 Q. The first paragraph --

16 First sentence of the second paragraph.

17 A. No. Well I mean, sorry to -- just to say that
18 it says, "Project MAD HATTER was originally arranged
19 to maximize the desirable constituents of smoke and
20 minimize the undesirable ones."

21 Q. I'm a little ahead of -- of --

22 A. I'm sorry. Where are you?

23 Q. The immediately preceding paragraph begins by
24 saying, "The purpose of the meeting was to discuss
25 the results from Projects MAD HATTER and HIPPO, and

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1 to stimulate further discussion on the importance of
2 nicotine to the industry." Right?

3 A. I see those words, yes.

4 Q. All right. Now one of the things that was
5 discussed at this meeting was how to increase
6 nicotine delivery; wasn't it, sir?

7 A. I haven't seen that yet. Do you want to point
8 me to the paragraph?

9 Q. Could you turn to the reference to Mr. H. G.
10 Horsewell.

11 A. Yes, I see that.

12 Q. It says there "...continues to work with
13 alkaline filter additives which selectively increase
14 nicotine delivery;" right?

15 A. That's what the words say.

16 Q. Can we go back to that document about that
17 meeting Lance Reynolds had that we looked at a little
18 bit earlier, Exhibit 4458. You have that, sir?

19 A. Oh, I'm sorry, probably in front of me. What
20 was the number again?

21 Q. 4458, sir.

22 A. Oh, yes, I have it. Yes.

23 Q. If we turn back to the wish list that's on the
24 second page, --

25 A. Uh-huh?

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1 Q. -- one of the things that was being looked at in
2 this 1977 meeting was to develop a low tar/high
3 nicotine cigarette that had -- that multiplied the
4 nicotine rush; right?

5 A. Well I think we've discussed the provenance of
6 this document before, and I can't give it any
7 provenance I'm afraid because it's not a Brown &
8 Williamson document. I'm not quite sure what you're
9 asking me to say in relation to this.

10 Q. Well now let's explore that a bit, sir.

11 A. Uh-huh.

12 Q. Are you telling us that Brown & Williamson did
13 not pay the advertising agency that wrote this
14 document?

15 A. I have no idea.

16 Q. All right.

17 A. I don't know anything about this document, what
18 this meeting was about, and if it took place, when it
19 took place.

20 Q. And you don't know how it got into the files of
21 Brown & Williamson; do you, sir?

22 A. Well I'm quite sure that Brown & Williamson may
23 well have attended a meeting and that Lance Reynolds
24 may well have been present at that meeting. And I
25 really do think probably the better way of getting an

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1 understanding of this whole piece would be to ask

2 Lance Reynolds.

3 Q. All right. Well I have, but let's talk -- let's

4 look at the document itself and what it says on page

5 two. Exhibit 4458 says on page two under the goals

6 and wishes list, "Multiplying nicotine rush;" right?

7 A. That's what it says.

8 Q. And it says, "Have free nicotine as opposed to

9 bound." Right?

10 A. Yes, it says that as well.

11 Q. All right. And you understand that nicotine

12 is -- is present in -- in tobacco; right?

13 A. Correct.

14 Q. And you understand that nicotine is present in

15 tobacco smoke.

16 A. Yes, of course.

17 Q. And it can be present in two forms, bound or

18 free; right?

19 A. I believe that's correct, yes.

20 MS. WIVELL: All right. I -- I need to

21 take a break.

22 THE WITNESS: Very good.

23 THE REPORTER: Off the record, please.

24 (Recess taken.)

25 BY MS. WIVELL:

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1 Q. Sir, Exhibit 1440 -- I'm sorry.

2 Exhibit 4458 is what we were talking about right

3 before the break. There it says at the bottom of the

4 second page, "market an ADDICTIVE PRODUCT in an

5 ETHICAL MANNER." Let me ask --

6 A. I'm sorry. Could you just hold on one second?

7 I -- I didn't have that in front of me.

8 Q. Oh, I'm sorry.

9 A. Okay. Here we are. Now I think --

10 Q. You've got the --

11 Can you turn to the second page.

12 A. Yes. I think I was on the second page. You're

13 right.

14 Q. All right.

15 A. Is it 23815?

16 Q. Yes.

17 A. Yeah.

18 Q. All right. Now it says there, the

19 second-to-the-last item on the page is "market an

20 ADDICTIVE PRODUCT in an ETHICAL MANNER;" right?

21 A. Uh-huh.

22 Q. Let me ask you this: Is it possible to market

23 an addictive product in an ethical manner?

24 A. I haven't ever considered the issue, so I'm

25 afraid I wouldn't know.

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1 Q. Well can you think about it now and give us an
2 answer?

3 A. Well certainly there are products like morphine,
4 cocaine, which are prescribed by medical doctors and
5 are sold legally through drug stores, et cetera,
6 where presumably that would be one way in which an
7 addictive product like morphine could be sold in an
8 ethical manner. I can't -- I mean what --
9 What do you want me to speculate about?

10 Q. Well let me ask you this: Let me turn it
11 around. Is it possible to market a legal product in
12 an unethical manner?

13 A. I thought that's entirely possible, and you
14 referenced earlier the -- the Ford Pinto where the
15 jury in that case certainly thought, I think, that
16 Ford had not acted ethically.

17 Q. And would you agree that if someone made untrue
18 statements about a legal product, that would be
19 marketing a legal product in an unethical manner?

20 A. Well I think if the statements were made
21 honestly in the belief that they were true at the
22 time they were made, they might nevertheless
23 subsequently prove to be untrue, but I don't think
24 that would be unethical, to make an honest statement
25 genuinely believing it to be true.

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1 Q. Well if someone made a statement publicly that
2 it knew wasn't true, in other words, if they were
3 saying one thing inside the company and saying a
4 different thing outside the company, that would be an
5 example of marketing a legal product in an unethical
6 manner; wouldn't it, sir?

7 A. If you're asking me whether or not -- well
8 whether a statement you are --

9 The hypothesis you're presenting to me is that a
10 statement is made publicly where there is a clear
11 conclusion internally that that statement is untrue.

12 Q. Yes, sir.

13 A. Yes. I don't think that would be -- could --
14 could be determined as being ethical, no.

15 Q. All right. And it would be improper; wouldn't
16 it?

17 A. Well if it's not ethical, I think by definition
18 it is not proper.

19 Q. Now sir, when you said a little earlier that the
20 company did not think cigarette smoking was
21 addictive, you're meaning you; right?

22 A. Well it's certainly my conclusion, and it's
23 supported by the conversations I had with my
24 scientists. And I think actually it's something
25 which is something that the man in the street, if he

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1 understood why I was making the statement I made,
2 would support.

3 Q. Well let me ask you this: You know who Martin
4 Broughton is; right?

5 A. Yes, I do know Martin.

6 Q. All right. And Mr. Broughton is the -- I keep
7 elevating him, so correct me if I am wrong -- the
8 chief financial -- or I'm sorry, he is the CEO of
9 B.A.T Industries P.L.C.; right?

10 A. That's right.

11 Q. Okay. I got it right and I didn't elevate him.
12 He always thanks me when I do that.

13 But if Mr. Broughton said to you --

14 Does he call you Nick?

15 A. Yes. It's a fairly informal company.

16 Q. If he said, "Nick, I really think cigarette
17 smoking is addictive," would that change your
18 position?

19 MR. McLAUGHLIN: Objection to the form.

20 A. If he said --

21 Could you just repeat the question again,
22 because --

23 If he said to me what?

24 Q. If he said, "Mr. Brookes" --

25 A. Okay. Fair enough.

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1 Q. -- "I think that cigarette smoking is
2 addictive," if he said that to you, would you change
3 your position?

4 A. I --

5 MR. McLAUGHLIN: Objection.

6 A. I think I'd say to him, "Martin, on what do you
7 base that conclusion? Is there something that you
8 have been made aware of by somebody or some
9 organization that I should sit down and understand?"
10 And we'd have a discussion about it.

11 Q. And if he said yes, hypothetically, would you
12 change your position? If he said, "Yes, the
13 scientists think it's addictive."

14 A. If I heard him say that, I'd want to say, "Well
15 let me talk to the scientists and understand whether
16 you understand -- stood their position correctly,
17 because it's nothing that any scientist within Brown
18 & Williamson has ever told me."

19 Q. Have you ever talked to Mr. Reynolds about this
20 subject?

21 A. You're referring to Lance Reynolds?

22 Q. Yes.

23 A. No, not directly, no.

24 Q. Now sir, you would agree that nicotine is the
25 reason people smoke?

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1 A. I think I said earlier it's one of the reasons
2 possibly why people smoke, it may be even an
3 important reason why people smoke, but I personally
4 don't believe it's the sole reason. And as I'm a
5 smoker, I think I have some authority to say that.

6 Q. All right, sir. Well you're aware that there
7 are cigarettes that are nicotine-less; right?

8 A. I think there's one cigarette or one trademark,
9 I think it was NEXT, that Philip Morris developed
10 that was supposedly denicotinized or whatever the
11 word is.

12 Q. And --

13 A. And it certainly didn't sell. But yes, I'm
14 aware of that product.

15 Q. Could you get out Exhibit 755 again.

16 A. 755.

17 Q. It's this hard-to-read document.

18 A. Ah. I might also just supplement my previous
19 answer, if I may. Of course there are cigarettes in
20 the marketplace, and we do sell some of them, which
21 have very, very low levels of nicotine as well.

22 Q. You'd agree you could make a cigarette out of
23 lettuce, but it would be unlikely that people would
24 buy it; right?

25 A. I think lettuce wouldn't taste very good if it

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1 were smoked.

2 Q. Well nicotine has a foul, rotten taste by
3 itself; doesn't it?

4 A. Well that's true of a lot of things you -- you
5 can --

6 If you just take chili powder, that doesn't
7 taste so great either, but it is, of course, a very
8 nice spice in relation to other certain meals.

9 Q. But you would agree that by itself, when
10 nicotine is burned, it tastes like foul, rotten
11 rubber; right?

12 A. I don't know. I think Lance Reynolds may have
13 made -- made that reference at some time in the past
14 which I might have overheard, but I don't know
15 whether that's -- I don't --

16 I certainly never tried to do it.

17 Q. All right. Would you turn to the page of
18 Exhibit 755 that ends with Bates number 101.

19 A. Uh-huh.

20 Q. There do you see the heading "Nicotine?"

21 A. Yes.

22 Q. It says under that heading, "It has been said,
23 'If it were not for nicotine in tobacco smoke, people
24 would be little more inclined to smoke cigarettes
25 than they are to blow bubbles or light sparklers.'"

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- 1 Right?
- 2 A. That's what it says.
- 3 Q. All right. And have you read the reference
- 4 which is cited here that says that?
- 5 A. Michael Russell, 1971?
- 6 Q. Yes, sir.
- 7 A. No, I have not.
- 8 Q. Now it goes on to say three paragraphs below it,
- 9 "The effect of nicotine on the brain is to increase
- 10 the level of arousal." Do you see that, sir?
- 11 A. Yes, I see that.
- 12 Q. Well, do you understand that nicotine does
- 13 affect the human brain?
- 14 A. I think it's generally understood that smoking
- 15 cigarettes does produce pharmacological effects,
- 16 that's right.
- 17 Q. Now --
- 18 A. Pleasant sensations in other words.
- 19 Q. Are you aware that cigarette smokers try to
- 20 maintain a constant blood level of nicotine to
- 21 present -- to prevent the unpleasant feeling that he
- 22 or she gets when they're not smoking?
- 23 A. Sorry. Could you repeat the question?
- 24 Q. Certainly.
- 25 Are you aware that cigarette smokers try to

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1 maintain a constant blood level of nicotine to
2 prevent the unpleasant feeling they get when they're
3 not smoking?

4 A. Well that may be a reference I've heard made
5 before. I can't remember in what context or by whom.

6 Q. Let me show you a document from BATCo that has
7 been previously marked as Plaintiffs' Exhibit 608.

8 A. Uh-huh.

9 Q. Sir, directing your attention to Exhibit 608,
10 this is a document that begins with the Bates number
11 102226308; right?

12 A. That's correct.

13 Q. Now would you turn to the page that ends with
14 Bates number 312.

15 A. Yes.

16 Q. There in the beginning of the last paragraph it
17 says, "Nicotine is the most pharmacologically active
18 constituent in tobacco smoke and is probably the most
19 usual factor responsible for the maintenance of the
20 smoking habit." Right?

21 A. Uh-huh, that's what it says.

22 Q. All right. Now sir, do you have any information
23 to the contrary?

24 A. Well no. I think I have already testified that,
25 obviously, nicotine in cigarette smoke is an

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1 important part of the cigarette smoking experience,
2 but it's not the sole part. And it may be an
3 important part, but it's not the sole part.

4 Q. Now could you take a moment and read this page,
5 please, the page that ends with Bates number 312.

6 A. The entire page?

7 Q. Yes, sir.

8 A. Yes, of course.

9 By the way, in doing so, I'm not sure --

10 Could I first find out who it is that authored
11 this report? Doesn't seem to have a signature or a
12 name and it doesn't appear to have a date. But maybe
13 you could help me.

14 Q. I'm afraid I don't have that information, sir.

15 A. Okay. But it was produced, I assume, by Brown &
16 Williamson; was it, in this case?

17 Q. Actually this was produced to us by BATCo.

18 A. Oh, was it? Okay, very good.

19 It's rather difficult to make sense of this
20 without seeing the lead-in, if I may try to --

21 Q. That's fine. Go ahead and read what you need.

22 A. Okay, thank you.

23 It's a document appearing to talk about
24 compensation; is that right?

25 I'm rather pleased. It seems -- it seems to

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1 support what I just said about the smoking habit,
2 that it's not just about nicotine. But anyway, what
3 would you care --

4 What would you like me to say in relation to
5 this document?

6 Q. Well I move to strike your comments.

7 Why don't you read the beginning paragraph on
8 the next page, too, sir.

9 A. Uh-huh.

10 Yes.

11 Q. Now at the top of the next page there is
12 reference to those products that don't have
13 nicotine --

14 A. Uh-huh.

15 Q. -- that have been offered as cigarettes; right?

16 A. Yes. Lettuce leaves and other herbal mixtures
17 it refers to.

18 Q. And it refers to them as being not commercial
19 successes; right?

20 A. It in fact says they have been commercial
21 failures, yes.

22 Q. And it goes on to say, "The main difference
23 between tobacco and other shredded vegetable products
24 is nicotine;" right?

25 A. That's what it says.

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1 Q. And in fact this document refers to a -- an
2 association that smokers who smoke cigarettes with
3 nicotine build up in their minds; right?

4 A. Going back on the previous page now I believe;
5 right?

6 Q. Yes.

7 A. Yes, okay.

8 Q. All right. Let me rephrase the question.

9 This document refers to an association that
10 smokers who smoke cigarettes with nicotine build up
11 in their minds; right?

12 A. I -- I'm reading along with you.

13 Q. And it refers to that as a mechanism similar to
14 Pavlov's dogs; right?

15 A. One moment.

16 MR. McCORMICK: Can you point out where you
17 are here?

18 Oh, yes. Okay.

19 A. There's a reference to that here, yes. I see
20 what you're referring to.

21 Q. And it --

22 It's talking about smokers saying they "build up
23 an association in their minds between the mouth
24 sensations such as flavour, irritation and 'impact'
25 and the amount of smoke that gives them the

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1 satisfactions of smoking. This is a similar

2 mechanism to Pavlov's dogs." Right?

3 A. That's what it says, yes.

4 Q. All right. And sir, you as a smoker recognize

5 that there is a pleasurable association that you get

6 when you inhale that first puff of cigarette smoke;

7 right?

8 A. Yes indeed, and the second and the third.

9 Q. All right. And you get that first pleasurable

10 sensation within seconds after inhaling that puff

11 of -- of cigarette smoke; don't you, sir?

12 A. Well I guess you immediately get the taste and

13 all the other impact in the back of the throat, and

14 of course the satisfaction from smoking, that's

15 right.

16 Q. Now on the next page it says, toward the bottom

17 of the page, "The smoker from the first group who

18 smokes to maintain a constant blood level of nicotine

19 is most likely trying to avoid the unpleasant

20 sensations that he feels when he is not smoking.

21 Without a cigarette he will become nervous, irritable

22 and likely to make mistakes in his work." Right?

23 A. I'm sorry, again you -- you turned the page and

24 you're looking where?

25 Oh, I find it. Yes, the last paragraph. I'm

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1 sorry.

2 MR. McCORMICK: Is this 313 now?

3 Q. All right. Just so the record is clear, sir, on
4 page -- the page that ends with Bates number 313, it
5 says, "The smoker from the first group who smokes to
6 maintain a constant blood level of nicotine is most
7 likely trying to avoid the unpleasant sensations that
8 he feels when he is not smoking. Without a cigarette
9 he will become nervous, irritable and likely to make
10 mistakes in his work." Right?

11 A. That's what this document says.

12 Q. Now this document, as you mentioned a little bit
13 ago, talks about compensation; right?

14 A. That's what I was reading on the previous page,
15 the page you asked me to read, yes.

16 Q. All right. And what do you understand
17 compensation to be, sir?

18 A. Well I think it might -- is a layman's
19 understanding, and it is that when people, for
20 example, decide to smoke a low tar cigarette as
21 opposed to a high tar cigarette, the behavior in
22 relation to smoking, the way they puff the cigarette,
23 et cetera, will change for a four- to six-week period
24 before normalizing to the way they would have smoked
25 the higher tar cigarette. And that, I think, is a --

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1 is a phenomenon, if you'd like, which I think is
2 pretty much common sense as well, and it's being
3 referred to as compensation.

4 Q. In other words, they're not getting, when they
5 switch to the so-called low tar/low nicotine
6 cigarette, they're not getting the same amount of
7 nicotine they were getting before, so unconsciously
8 they change their smoking behavior; right?

9 A. Well I think that may be partly it. Partly it
10 may also be to do with the fact that the low tar
11 cigarettes do taste lighter and less of a mouthful of
12 smoke, probably less impact on the back of the
13 throat. Generally a different smoking experience.
14 So it does take a little while to -- to adopt -- or
15 adapt, rather, adapt. But I -- I think the studies
16 show that between four and six weeks, you know, a
17 smoker of a low tar cigarette will smoke his in the
18 same way as he would have smoked previously.

19 Q. Now sir, let me ask you this: One way to
20 compensate is to smoke more cigarettes; right?

21 A. It might be one way to compensate, although I
22 don't think that's quite what occurs.

23 Q. Well sir, you understand that another way to
24 compensate would be to cover up the ventilation holes
25 in the filter with your fingers or your mouth,

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1 therefore obtain more of the smoking constituents;

2 right?

3 A. That might also have that effect, although it

4 would make it rather redundant having traded down to

5 a low tar cigarette.

6 Q. And sir, you -- you understand that another way

7 that smokers compensate is they take bigger puffs;

8 right?

9 A. As I said, during this adaptive -- adaption

10 period of four to six weeks that may occur, that's

11 right.

12 Q. Well sir, did Brown & Williamson ever tell

13 people who smoked low tar, supposedly low nicotine

14 cigarettes that they would compensate, it is likely

15 that they would compensate in their smoking

16 behaviors?

17 A. I think most people would say that was common

18 sense.

19 Q. I guess the answer to my in question then is no,

20 Brown & Williamson didn't ever tell the smokers that

21 it would likely be that they would compensate if they

22 chose --

23 A. I think --

24 Q. -- low nicotine cigarettes; right?

25 A. I frankly don't know. We may have done, but I

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1 would have thought it would have been a bit of a
2 redundant communication because most people would
3 say, "Well, of course."

4 Q. Well sir, you can't direct us to a single
5 communication that Brown & Williamson made with
6 people who smoked its cigarettes that said if you go
7 to low tar or low nicotine cigarettes, you may
8 compensate and actually take in more of the cigarette
9 smoke constituents; right?

10 A. Well I'm not sure that is what I didn't just
11 say. I said they may smoke the cigarette
12 differently, and whether or not in the process of
13 smoking a low tar cigarette differently they would
14 actually take in more of the constituents of smoke
15 than they would have done had they been smoking the
16 high tar cigarette, I don't know that. They probably
17 didn't.

18 Q. Well just so we're clear, the subject of
19 compensation has not been something that Brown &
20 Williamson communicated to cigarette smokers
21 publicly; did it?

22 A. I have no way of knowing "yes" or "no." I --
23 We may have done, but my suspicion is that we
24 wouldn't have done because it's common sense.

25 Q. And you can't direct us to any public

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1 communication that did so; right?

2 A. No, that's quite right, I -- I can't sitting
3 here today do that.

4 Q. Would you turn back to Exhibit 179, please.

5 A. Sorry, what do you --

6 Could you just help with that?

7 MR. McCORMICK: No, I'm sorry.

8 MS. WIVELL: No, it's this document.

9 THE WITNESS: I think that seems to have
10 disappeared from my desk. I'll try and have a look.

11 Is it in this stack, too?

12 THE REPORTER: I don't know.

13 THE WITNESS: All right. I'll take a look.

14 MR. McCORMICK: There it is.

15 THE WITNESS: Is this it? 179? Okay.

16 Q. Just for the record, that Exhibit 179 is
17 entitled "SMOKE CONSTITUENTS AND THEIR RELATION TO
18 QUALITY, BRISTOL CONFERENCE, APRIL 1954;" right?

19 A. That's right.

20 Q. Now sir, isn't it true that as early as the time
21 of this document was written, the importance of the
22 form of nicotine in cigarette smoke was known within
23 Brown & Williamson?

24 A. "The importance of form of nicotine." I'm
25 afraid you're going to have to explain the question a

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1 little more for me.

2 Q. All right. Well you'd agree, wouldn't you, sir,
3 that nicotine can be present in cigarette smoke in
4 either a free or a bound form?

5 A. I believe that's correct, but I can't really
6 speak to it because I'm not a scientist.

7 Q. Now sir, you would agree that nicotine occurs as
8 a salt form or a bound form naturally; right?

9 A. Yes, it is a salt, I believe, an alkaline, and
10 it appears naturally in tobacco leaves.

11 Q. And you understand that the unbound or free
12 nicotine form is volatile and readily absorbed by
13 tissues; right?

14 A. I don't have that direct knowledge, no, I'm
15 afraid I don't. What I understand is that whether it
16 be bound or free in tobacco smoke, it's -- all the
17 nicotine in the tobacco smoke tends to be taken up by
18 the lungs.

19 Q. Well sir, isn't it true that nicotine in an
20 unbound form or a free form is more readily absorbed
21 through tissues?

22 A. I honestly don't know that. I'm not a
23 scientist. But as I said earlier, my understanding
24 is, I think it is 99 percent of all nicotine, whether
25 it's free or bound, would be absorbed by the lungs in

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1 the smoking of a cigarette.

2 Q. This is something that you would defer to Scott
3 Appleton on; wouldn't you, sir?

4 A. I'd certainly want to consult with him before
5 giving an authoritative opinion in a deposition
6 before the ladies and gentlemen of this jury, that's
7 right.

8 Q. All right. And have you reviewed the testimony
9 that he's given in this case on the relative
10 absorption rates of free and bound nicotine?

11 A. No, ma'am, I haven't.

12 Q. Has --

13 Has anyone ever shared with you his basic belief
14 that free nicotine is more readily absorbed than
15 bound nicotine?

16 MR. McCORMICK: I'm going to object to that
17 characterization of the deposition, Ms. Wivell. If
18 you have a part of that deposition you'd like the
19 witness to review, please do so, but I would ask you
20 not to characterize it and object to that statement
21 as a mischaracterization.

22 A. I'm sure if Scott Appleton is the person to whom
23 I would have to turn for my opinion on this issue,
24 whatever he said in the deposition I -- unless he
25 subsequently felt it was -- he had misspoken, I'm

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1 sure is a fair reflection of the views of Brown &
2 Williamson.

3 Q. So as far as you're concerned, Scott Appleton
4 speaks for Brown & Williamson on that issue; right?

5 A. Well he is one of the scientists in the research
6 and development department to whom I would refer on
7 these sorts of matters. He's the director of
8 regulatory affairs, he's a doctor of toxicology, and
9 I -- I believe he's an expert in some of these
10 matters, so he would be naturally someone I would
11 turn to.

12 Q. All right. Would you turn to the page of
13 Exhibit 179 that ends with Bates number 429.

14 A. 429.

15 Q. There at the top of the page it says, "The form
16 in which nicotine is produced in smoke is a major
17 point of interest. Bogen has stated that the
18 strength or irritating properties of tobacco are
19 independent of nicotine but con -- but content" --
20 I'm sorry, strike that. Let me begin again.

21 And there it says, "The form in which nicotine
22 is produced in smoke is a major point of interest."
23 Right?

24 A. Uh-huh.

25 Q. And it goes on to say, "Nicotine in the form of

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1 a free base is much more easily volatilized --

2 volatilized than its salts;" right?

3 A. Yes, that's what it says.

4 Q. All right. Do you know what the implications of
5 free base nicotine being more easily volatilized than
6 nicotine salts are, sir?

7 A. I can tell you what I think it means, which is
8 that if there are -- if there's free nicotine in
9 tobacco, it will very probably have been driven off
10 in the process of -- of making cigarettes
11 because, I'm sure you're aware, tobacco goes through
12 a process of being heated, moisturized and then dried
13 at high temperatures, and if it's volatile, it would
14 almost certainly not be in the tobacco that ends up
15 in cigarettes that we sell.

16 Q. Now sir --

17 A. That's a layman's understanding of that phrase.

18 Q. It goes on to say at the bottom of this page,
19 "The amount of nicotine absorbed by the smoker
20 depends on duration and extent of contact of smoke
21 with mucous membranes of the oral and respiratory
22 passages;" right?

23 A. That's what it --

24 That's what the document says.

25 Q. And so you would agree that a fair reading of

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1 this document indicates that as early as 1954, the
2 form in which nicotine was present in cigarette smoke
3 was of interest to Brown & Williamson.

4 A. Can I just go back and refresh my memory as to
5 what this is?

6 Well all I can testify to, frankly, is nicotine
7 is of interest to tobacco manufacturers generally,
8 Brown & Williamson among them, and nicotine, as I
9 understand it, does appear in bound and free forms.
10 I really know very little more about it than that,
11 other than what I've already testified to.

12 Q. Can you turn back to Exhibit 4458, that memo
13 regarding the meeting that Mr. Reynolds attended.

14 A. Ah, with --

15 The advertising agency document? Yes.

16 Q. If we turn to the second page, one of the things
17 on the goals/wish list is to have free nicotine as
18 opposed to bound; right?

19 A. Again, that's what it says.

20 Q. All right. And isn't it true that even before
21 this meeting took place, it was known within the BAT
22 Group that the form of nicotine affected the rate
23 of -- of absorption in the smoker?

24 A. I would have to defer to my scientists on that
25 issue. This is not an area in which I'm a

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1 specialist.

2 (Plaintiffs' Exhibit 1487 was marked
3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as
6 Plaintiffs' Exhibit 1487, this is a document that
7 bears the Bates number 536480910; right?

8 A. That's correct.

9 Q. All right. And for the record, I'd like to --
10 the record to reflect that the document was
11 previously marked in a deposition, but unfortunately
12 I don't have the exhibit number, so I've had it
13 re-marked as 1487.

14 Sir, take a moment and review this document,
15 please.

16 A. Okay. I've read it, but I don't really
17 understand it.

18 Q. All right. This document refers to a study,
19 "The Fate of Nicotine in the Body;" right?

20 A. That's what it seems to say, yes.

21 Q. And "The Fate of Nicotine in the Body" was one
22 of the Battelle studies that Sir Charles Ellis
23 mentioned in his summary document that we looked at
24 earlier in the deposition; right?

25 A. I think there was a study by that name. This

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- 1 may be the same study they're referring to.
- 2 Probably, in fact.
- 3 Q. Now this document shows a stamp "RECEIVED,
4 E.P.F., July 31st, 1963;" right?
- 5 A. That's correct.
- 6 Q. Now who was E. P. Finch?
- 7 A. I'm afraid I have no -- no idea.
- 8 Q. Oh. He was an officer of Brown & Williamson;
9 wasn't he?
- 10 A. He may well have been, but in 1963 I couldn't
11 say.
- 12 Q. Is he among the pictures on the 26th floor over
13 there?
- 14 A. I'll have to go and check. I don't remember a
15 Finch, but there may be a Finch up there.
- 16 Q. Okay. Now it says here, "I refer to 'The Fate
17 of Nicotine in the Body.' In the very simplest and
18 incomplete language, this article gives the
19 background from which the following is deducted;"
20 right?
- 21 A. "Deduced."
- 22 Q. "Deduced," pardon me. Apart from that, I've
23 read it correctly; right?
- 24 A. Yes, it seems to say that.
- 25 Q. And it goes on to say, "Nicotine is absorbed by

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1 the body in varying amounts depending on smoking
2 habits and the body chemistry of the individual."
3 Right?
4 A. Correct.
5 Q. And it goes on to say, "Other factors are the
6 more rapid absorption of the free alkaloid than the
7 salts;" right?
8 A. Yes.
9 Q. Keeping in mind that you're not a scientist, you
10 do understand that the reference there to free
11 alkaloid being more rapidly absorbed than the salts
12 is talking about the more rapid absorption of free
13 versus bound nicotine; right?
14 A. I assume so.
15 Q. Because you would agree nicotine is an alkaloid;
16 right?
17 A. I would agree that nicotine is an alkaloid.
18 That much my --
19 Q. And sir, isn't it true --
20 A. -- my --
21 That much I know.
22 Q. I'm sorry. We have to be careful. The court
23 reporter has chided me for not letting you finish, so
24 I will try and do better.
25 A. Thank you, court reporter. Appreciate that.

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1 Q. Now sir, you would agree that it has been known
2 within the BAT Group since the early '60s that the
3 kick or reaction that a smoker gets to nicotine is
4 due to the concentration of nicotine in the blood;
5 right?

6 A. I frankly would have to ask you to repeat that
7 question because I didn't understand it fully.

8 Q. All right. Let me see if I can say it a little
9 slower and maybe a little better.

10 Now you would agree that it has been known
11 within the BAT Group since the early '60s that the
12 kick or reaction a smoker gets to nicotine is due in
13 part to the form the nicotine is in.

14 A. Well I think there has been speculation within
15 BATCo to -- you know, to say that maybe there is a
16 difference between free and bound nicotine. I'm not
17 sure that where we are today would support that.

18 I --

19 My recollection is that, as I said earlier in
20 testimony, that it really doesn't make a
21 whole-row-of-beans difference because 99 percent of
22 all the nicotine in smoke is rapidly absorbed into
23 the lungs when it's smoked in any event. So I think
24 the relevance between bound and unbound nicotine may
25 very well have been a theory, a hypothesis, but

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1 rather a, as I understand it at least, a -- a blind
2 alley that people were thinking about in -- in the
3 '60s.

4 Q. Well sir, it was an alley that the BAT Group
5 scientists went down for the better part of 35 years;
6 isn't that true?

7 A. I frankly don't know. But it's -- as I said,
8 it -- I think that it's a -- it was a hypothesis that
9 was disproved.

10 Q. Well can you direct me to one document that
11 disproves the hypothesis?

12 A. I probably could if I spoke to my scientists,
13 but I -- I don't have those documents with me.

14 Q. All right. Well let's take a look at some
15 documents that were written by BAT Group scientists.

16 A. Uh-huh.

17 Q. Sir, showing you what's previously been marked
18 as Plaintiffs' Exhibit 964, this is a document that
19 is dated 1964; isn't it?

20 A. Ah, it appears to be, yes.

21 Q. And --

22 A. August.

23 Q. Would you turn to the second page of the
24 document and read the last page to yourself.

25 A. Thank you.

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1 Well I've finished reading it. Again, I don't
2 fully understand it, but --

3 Q. It says in the second page of Exhibit 964,
4 "There seems no doubt that the 'kick' of a cigarette
5 is due to the concentration of nicotine in the
6 blood-stream which it achieves and this is a product
7 of the quantity of nicotine in the smoke and the
8 speed of transfer of that nicotine from the smoke to
9 the blood-stream;" right?

10 A. Yes. The way it --

11 Yes, that's what it says.

12 Q. And it goes on to say, "Nicotine is in the smoke
13 in two forms as free nicotine base, paren, think of
14 ammonia, paren, and as a nicotine salt, paren, think
15 of ammonium chloride, paren, and it is almost certain
16 that the free nicotine base is absorbed faster into
17 the blood-stream;" right?

18 A. That's what it says.

19 Q. All right. And sir, do you have any science
20 that you can direct us to as you sit here today that
21 contradicts that statement?

22 MR. McLAUGHLIN: Object to the form.

23 A. Well I -- I think I've already testified to the
24 fact that I believe I've been advised by my
25 scientists to the fact -- to the effect that this was

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1 a hypothesis that was not something which was
2 subsequently found to be correct because of the
3 amount of nicotine that is readily absorbed by the
4 lungs very efficiently for -- in tobacco smoke, that
5 99 percent is, as I say, is automatically stripped
6 out by the lungs, and -- and therefore it's
7 irrelevant whether it's free or bound. But I am not
8 an expert and I defer to my scientists on that
9 matter.

10 Q. Is Dr. Robert Sanford one of the scientists
11 you'd defer to in this matter?

12 A. I don't know the name. I've heard the name
13 before, but I can't recall it. I can't -- can't
14 place him.

15 Q. All right. Do you --

16 Were you aware that he was vice-president of
17 research and development for Brown & Williamson?

18 A. As I said, I heard the name and I can't place
19 exactly what role he had at Brown & Williamson or
20 when he held it.

21 Q. Sir, showing you what's previously been marked
22 as Plaintiffs' Exhibit 962, this is a document
23 entitled "TPM AQUEOUS EXTRACT pH AND EXTRACTABLE
24 NICOTINE STUDIES OF MAJOR CIGARETTE BRANDS FROM BROWN
25 & WILLIAMSON AND SOME DOMESTIC COMPETITIVE

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1 COMPANIES." Right?

2 A. Right.

3 Q. And this document was authored by someone named

4 Leach and Shockley and issued by Dr. R. A. Sanford;

5 right?

6 A. That's what it says.

7 Q. All right. Would you take a moment and read the

8 abstract and the summary of this document, please.

9 A. In other words, the first three pages.

10 Q. The first three pages, sir.

11 A. Very good.

12 Q. Actually the second through fourth.

13 A. Yes.

14 Yes, I've read those two or three pages.

15 Q. All right, sir. This is a study that was done

16 at Brown & Williamson; right?

17 A. Yeah, it would appear to be, certainly.

18 Q. All right. And you would agree that one of the

19 reasons the study was done is that Brown & Williamson

20 was aware that free nicotine in cigarettes increased

21 the pH -- I'm sorry, strike that.

22 You would agree that one of the reasons this

23 study was done was because Brown & Williamson

24 believed that there was a correlation between sales

25 of cigarettes and -- I'm having trouble, excuse me.

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1 One of the reasons this study was done was
2 because data seemed to indicate a demand in the
3 domestic market, in other words the U.S. market, for
4 cigarettes with higher extractable nicotine; right?

5 A. You're drawing that conclusion from the
6 abstract, is that right?

7 Q. Well actually from the summary.

8 A. Oh, okay. I'm on the wrong page.

9 I'm not sure how you draw that conclusion, but
10 they certainly seem to be drawing correlations
11 between some domestic sales and -- or domestic
12 brands, I should say, and levels of extractable
13 nicotine, as you say, and pH -- the pH value as
14 well. But again, I mean this is an area of science
15 in which I really don't have a direct or deep
16 familiarity, although I'm broadly aware of the issues
17 obviously.

18 Q. Well it says on the page that ends with Bates
19 number 666, "The data seem to indicate a demand in
20 the domestic market for those brands in the higher
21 extractable nicotine range;" right?

22 A. Just let me see where you're looking. I think I
23 read those words, but I don't know where to find
24 them. Where --

25 Where are you looking?

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- 1 Q. Second paragraph under the word "SUMMARY."
- 2 A. Uh-huh. Ah, thank you.
- 3 Q. You see that; right?
- 4 A. Yes, those are the words.
- 5 Q. And this particular study had looked at sample
- 6 cigarettes from not only Brown & Williamson but
- 7 Philip Morris, Reynolds, American, Lorillard and L&M,
- 8 Liggett & Myers; right?
- 9 A. That's what it says.
- 10 Q. They had been analyzed for aqueous extractable
- 11 pH and for extractable nicotine content.
- 12 A. Again that's what it says.
- 13 Q. And essentially the results of this study
- 14 indicated that as smoke pH went up, free nicotine
- 15 went up and sales went up; right?
- 16 A. That's probably a rather simplistic analysis of
- 17 this paper. I really haven't studied the paper in
- 18 detail; would need to do so to make any conclusions
- 19 like that. But there does seem to be some reference
- 20 to correlation between cigarette brands and pH
- 21 factors, and I believe that's what they're talking
- 22 about.
- 23 Q. And it goes on to say after the sentence that
- 24 says "The data seem to indicate a demand in the
- 25 domestic market for those brands in the higher

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1 extractable nicotine range," goes on to say, "They
2 are consistent with an independence of smoker
3 response on total nicotine delivery within the
4 experienced pH range." Right?

5 A. Again, I'm sorry, I lost where you were --
6 Could you again refer me to the paragraph? I'm
7 sorry.

8 Q. The second paragraph under the heading
9 "SUMMARY."

10 A. Oh, that same paragraph?

11 Q. Yes, sir.

12 A. Well I'm afraid I'm finding it very difficult to
13 understand what is meant by those words in that
14 second sentence. The "independence of smoker
15 response on total nicotine delivery within the
16 experienced pH range" is a use of language that I'm
17 not, you know, my -- I'm not directly familiar with.
18 But they do talk about "Efforts are made to correlate
19 the data with blend analyses," and I'm certainly
20 aware of the fact, of course, that pH deliveries in
21 cigarettes are dependent largely on the types of
22 tobacco that you use in blending the cigarette.

23 Q. Well it's not just dependent on the types of
24 tobaccos, it's also dependent upon how those tobaccos
25 are treated; right?

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1 A. I'm not sure that is right, no. But I'm not
2 sure that the way those tobaccos are treated actually
3 does impact the pH, but I think the primary way of --
4 of modifying pH is -- is -- is blending.

5 Q. Well sir, isn't it true that nicotine transfer
6 can be affected by ammonia treatment?

7 A. Nicotine transfer?

8 Q. Yes, sir.

9 A. I think there was, again, a theory that that
10 might be the case, but I believe that's not correct.

11 Q. Well sir, there was a theory that was a working
12 hypothesis within the BAT Group tobacco companies for
13 the better part of 20 years that ammonia affected
14 nicotine release; isn't that true?

15 A. Well I certainly have heard discussion of the
16 fact that that is a hypothesis, even may be a working
17 hypothesis, but I -- the best of my understanding is
18 that that isn't the case.

19 Q. Well sir, you understand that there was a joint
20 Brown & Williamson and BATCo project entitled Project
21 SHIP?

22 A. Project SHIP?

23 Q. Yes, sir.

24 A. No, I don't -- I --

25 Well, I'm not aware of the name Project SHIP. I

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1 may be aware of the project.

2 Q. All right. By the way, before we leave Exhibit
3 962 and talk about Project SHIP, I would like you to
4 turn to the page that ends with Bates number 676.

5 A. Yes.

6 Q. And there do you see the second complete
7 paragraph where it says, "Smoke pH, that is, the
8 aqueous extract pH, and buffer capacity, undoubtedly
9 effect the absorption of nicotine by physiological
10 systems?"

11 A. Those are again the words used.

12 Q. And sir, can you as you sit here direct us to
13 any evidence to the contrary?

14 A. Well I'd have to consult with my scientists
15 at -- to direct you specifically to materials that
16 suggest to the contrary, but that is my
17 understanding, that this hypothesis is not correct in
18 relation to cigarette smoking. It may be correct in
19 other contexts, I just don't know.

20 Q. Well by the way, the context that it was being
21 used in when that statement was made in Exhibit 962,
22 that was talking about domestic cigarettes; wasn't
23 it?

24 A. Well I think the -- the study was comparing
25 domestic cigarettes, and certainly that's true.

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1 Q. By "domestic," that means U.S.; right?

2 A. I imagine so. This is a Brown & Williamson
3 document. Yes.

4 THE REPORTER: Let's go off the record a
5 moment, please.

6 (Discussion off the record.)

7 BY MS. WIVELL:

8 Q. Sir, showing you what's previously been marked
9 as Plaintiffs' Exhibit 613, this is a document that
10 begins with the Bates number 100543649; right?

11 A. Correct.

12 Q. And this is a document dated November 12th, 1984
13 regarding Project SHIP; right?

14 A. It appears to be, yes.

15 Q. All right. Would you turn to the page that ends
16 with Bates number 653.

17 A. Yes.

18 Q. Now were you familiar enough with Project SHIP
19 to know that it was done in stages?

20 A. I think I may have testified before we went off
21 the record that I hadn't heard of Project SHIP
22 before. I'm sorry.

23 Q. All right. Well here it says, "Project SHIP,
24 SHIP III/IV - Additional Study of Sheet Properties;"
25 right?

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- 1 A. Yes indeed, that's the heading.
- 2 Q. And there is a list of objectives.
- 3 A. Uh-huh.
- 4 Q. You have to answer out loud.
- 5 A. Yes indeed.
- 6 Q. All right. And one of those objectives was
- 7 "nicotine transfer efficiency into mainstream;"
- 8 right?
- 9 A. Yes, that's what it says. That's at b).
- 10 Q. And point e) is "effect of pectin levels on
- 11 nicotine manipulation;" right?
- 12 A. That's what that says as well, yes.
- 13 Q. All right. Would you turn to the next page.
- 14 Now there is information of a rather technical nature
- 15 concerning nicotine transfer into the mainstream of
- 16 smoke; right?
- 17 A. Would you like me to read it? I see the
- 18 heading, but I haven't read it yet.
- 19 Q. All right. Could you read it, please, sir, and
- 20 also continue on to the next portion where it says,
- 21 "Free Base/Vapour Nicotine Release."
- 22 A. Very good.
- 23 Q. Have you read it, sir?
- 24 A. I'm sorry, I'm still working on c).
- 25 Q. I'm sorry.

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1 A. Well I'm wondering if Project SHIP was the
2 reverse engineering of Marlboro that was undertaken
3 by Brown & Williamson. Would that be correct?

4 Q. Sir, you understand that Brown & Williamson and
5 BATCo together did a reverse engineering project of
6 Marlboro; right?

7 A. I wasn't aware that BATCo was involved, but I
8 did know that Brown & Williamson undertook that
9 exercise, yes.

10 Q. By the way, by "reverse engineering," what do
11 you mean, sir?

12 A. I think what it means is basically to take apart
13 the product and try to comprehend by looking at the
14 individual constituents in the product how the
15 product was first made.

16 Q. In other words, to see how it works; right?

17 A. Well to see what is -- it is about it that is
18 different from any other cigarette, that's right.

19 Q. Now you would agree that at or around the time
20 this document was written in the '80s, there had been
21 an appreciable increase in the sales of Marlboro
22 cigarettes; right?

23 A. Let me see. When are we talking about? '80s.
24 yes, I think Marlboro was already then on a growth
25 profile in the marketplace, certainly.

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1 Q. And would you agree that as the Marlboro profile
2 went up, the sale of Brown & Williamson cigarettes
3 went down?

4 A. I think in the '80s we were losing market share,
5 that's right.

6 Q. All right. And one of the reasons that Project
7 SHIP was done was in order to try and figure out why
8 Marlboro was selling more cigarettes; right?

9 A. I would guess that might have been one of the
10 reasons for doing it, yes.

11 Q. All right. Well you know that over the years,
12 that one of the aims of the BAT Group tobacco
13 companies was to make a cigarette that was as good as
14 if not better than Marlboro; right?

15 A. Well I think in --

16 If you look at the world's tobacco market,
17 cigarette market throughout the world, certainly
18 Marlboro I think is the number one selling brand
19 worldwide, and therefore necessarily competitors to
20 Marlboro would want to try to understand if there was
21 anything different about that product otherwise than
22 the color of the pack it was being sold in.

23 Q. All right. And apart from the color of the
24 packet that it was being sold in, the BAT Group
25 companies undertook a project that was called

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1 World-Wide BEST; right?

2 A. I've heard of World-Wide BEST, yes. I think
3 that was a blending exercise to produce one of the
4 best -- or to produce the best blend of tobaccos that
5 we could.

6 Q. And you would agree that World-Wide BEST was put
7 in place in order to try and market cigarettes
8 throughout the world that were better than Marlboro.

9 A. Was that the direct --

10 I imagine that was one of the objectives, was to
11 produce a better cigarette certainly, a better mouse
12 trap.

13 Q. That's what World-Wide BEST refers to; right?

14 A. I think it was talking about the blend of
15 tobaccos. I think that was the principal focus.

16 Q. Now Project SHIP -- I'm sorry, strike that.

17 After reading Exhibit 613, you believe that this
18 project that's referred to here, Project SHIP, is
19 part of the reverse engineering of Marlboro?

20 A. I was making --

21 I was just asking that question, because I --
22 I'm not familiar with the title Project SHIP, but it
23 does refer to Marlboro in here, and I was wondering
24 whether that was what it was.

25 Q. All right. Now on page --

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1 On the page that ends with Bates number 654
2 there is reference to nicotine transfer efficiency
3 into the mainstream; right?

4 A. Yes, item b).

5 Q. And that was one of the objectives of Project
6 SHIP, was to increase nicotine transfer into the
7 mainstream of cigarette smoke; wasn't it?

8 A. I think it was -- well I'm not --

9 I'm not that familiar with Project SHIP. I've
10 made that clear. And you did say earlier "having
11 read this document," I have really only read two
12 paragraphs of this document. But I would -- seems to
13 suggest that this is research into whether or not
14 that is -- from -- in --

15 Well the title to the paragraph seems to suggest
16 that was the subject for research.

17 Q. All right. And another subject that was
18 researched is referenced under point c) on the next
19 page of the document; right?

20 A. That was --

21 Well I think it says in terms "...the objective
22 is the acquisition of knowledge concerning release in
23 nicotine in different forms...."

24 Q. Well I was referring to point c), sir, that says
25 "Free Base/Vapour Nicotine Release;" right?

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1 A. Yes. I was referring to the third -- or the
2 last -- the final paragraph there where the
3 words "...the objective is the acquisition of
4 knowledge concerning release in nicotine in different
5 forms...."

6 Q. All right. And there are three forms of
7 nicotine that are referenced here that may be
8 presented to the smoker; right?

9 A. That's what this page -- paper hypothesizes,
10 yes.

11 Q. Okay.

12 A. That's what it says.

13 Q. And it says here, "It has long been believed
14 that nicotine presented" in the free base form "is
15 considerably more 'active.'" Right?

16 A. Yes. I believe that's based on research that
17 goes way back. That's right.

18 Q. Now sir, as a result of work that was done in
19 Project SHIP, isn't it true that the BAT Group
20 companies adopted ammoniation to try and emulate
21 Marlboro's smoker response?

22 MR. McLAUGHLIN: Object to the form.

23 A. I think certainly Brown & Williamson in -- in
24 the process -- in the course of doing the reverse
25 engineering work, which I'll assume was Project SHIP,

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1 I think we identified that Marlboro's products -- or
2 the product Marlboro was ammoniated, as you said,
3 that reconstituted tobacco within the blend had been
4 ammoniated, and that was something which we then
5 looked to see if we could emulate.

6 Q. And you understand that the BAT Group had
7 ammonia technology conferences at which the effect of
8 ammonia on nicotine transfer was discussed; right,
9 sir?

10 MR. McLAUGHLIN: Object to the form.

11 A. Well I'm sure that BATCo and Brown & Williamson
12 and possibly other companies in the B.A.T Industries
13 group of companies would have held conferences on
14 this issue. I'm not directly familiar with any, but
15 I'm sure some may have taken place.

16 Q. Sir, showing you what's previously been marked
17 as Plaintiffs' Exhibit 617, --

18 A. Yes.

19 Q. -- this is a document that bears the Bates
20 number 401155909; right?

21 A. That's correct.

22 Q. And it is an executive summary of ammonia
23 technology; right?

24 A. That is the heading.

25 Q. And handwritten at the top it says

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1 "Introduction, Ammonia Technology Conference,
2 Louisville, June 13th dash -- June 11th dash 13th,
3 1990;" right?

4 A. That's what it says.

5 Q. Sir, have you seen this document before?

6 A. Can I just have a look and see if --

7 It doesn't look familiar to me, no.

8 Q. All right. Why don't you take a few moments and
9 review the first four or five pages of the document.

10 A. Very good.

11 (Discussion off the stenographic record.)

12 A. I'm not quite sure what page you wanted me to go
13 to.

14 Q. How far have you gotten, sir?

15 A. Just starting Bates number 913.

16 Q. All right. Why --

17 I think you've probably gone far enough.

18 A. Okay.

19 Q. Exhibit 617 --

20 MR. McCORMICK: Could I ask just -- since
21 you've asked the witness to read that far, if you
22 could just finish 913.

23 THE WITNESS: Oh, okay.

24 All right.

25 Q. All right. You have now had the opportunity to

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1 read the first few pages of Exhibit 617; right?

2 A. Yes, I have, ma'am.

3 Q. Exhibit 617 reports an ammonia technology

4 conference that was held in Louisville in 1990;

5 right?

6 A. It appears so, yes.

7 Q. Now that was not the first ammonia technology

8 conference that was held in Louisville by the BAT

9 Group companies; was it?

10 A. You keep referring to "the BAT Group

11 companies." I assume you're talking about BATCo --

12 Q. The tobacco --

13 A. -- and the associated companies in the B.A.T

14 Industries group of companies.

15 Q. No, sir, I'm referring to the BAT Group

16 companies as defined by B.A.T's secretary -- B.A.T

17 Industries' secretary.

18 A. I haven't seen that definition, so you'll have

19 to help me with that.

20 Q. All right.

21 A. But let -- let me answer your question anyway.

22 There does appear to be a reference here to an

23 earlier conference in '89. I don't know where it was

24 held. It may have been held in Louisville. And

25 seems to imply the same representatives from the

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1 different companies might have been present, so --

2 Q. Just so we're clear --

3 A. That answers your question, I think.

4 Q. All right. Just so we're clear, reference to
5 the representatives of the various companies, we're
6 talking about the tobacco companies within the BAT
7 Group; right?

8 A. Yes. I'm speculating here because they just --
9 it's a summary of what was discussed, but it talks
10 about B.A.T Germany, it talks about Souza Cruz in
11 Brazil, it talks about BATCo, and it talks about
12 Brown & Williamson. I would imagine they had
13 representatives present at the conference.

14 Q. All right. And the results of that first
15 conference had been reviewed with the Tobacco
16 Strategy Review Team at B.A.T Industries; right?

17 A. I --

18 MR. McLAUGHLIN: Object to the form.

19 A. It says here the proceedings --

20 Well, this conference will be reviewed by the
21 TSRT this September to assess progress.

22 Q. Well it also says, "The results of the first
23 conference and increasing commercialization of AT by
24 BAT Group companies led the Tobacco Strategy Review
25 Team to request a second conference focused on the

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1 practical application of AT worldwide;" right?

2 A. I think I might have read those words.

3 Oh, it's right at the top there. Is that

4 right?

5 Q. At the top of the page that ends with Bates

6 number 911.

7 A. Yes. Let me just read those again.

8 That's what it says.

9 Q. All right. And that's part of the introduction

10 that Mr. Pritchard gave when he welcomed the

11 delegates to the meeting; right?

12 A. So it says.

13 Q. Now the TSRT, that's the Tobacco Strategy Review

14 Team; right?

15 A. That's what those initials stand for, I believe,

16 yes.

17 Q. You've never been a member of that team; have

18 you, sir?

19 A. I have been a member of its sort of successor

20 organization which was the TSG, I believe, the

21 Tobacco Strategy Group, which was, I think, just a --

22 another name applied to the TSRT. That was a

23 position or the position --

24 I was invited to attend those meetings when I

25 was director of new business development. We talked

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1 about that earlier.

2 Q. All right. Just so we're clear here, according
3 to what Mr. Pritchard told the group and is reflected
4 in Exhibit 617, the TSRT had requested a second
5 conference to focus on the application of ammonia
6 technology; right?

7 A. It --

8 That's what it says, to request a second
9 conference focused on the practical applications of
10 AT worldwide.

11 Q. And "AT" means ammonia technology; right?

12 A. I -- I believe so, yes.

13 Q. You have to let me finish too, sir. Okay?

14 Now it went on --

15 It goes on to say in Exhibit 617 that "The
16 proceedings of the -- this conference," in other
17 words the 1990 conference, "will be reviewed by the
18 TSRT in September to assess progress;" right?

19 A. That's what it says.

20 Q. And in fact that occurred; didn't it, sir?

21 A. I have no idea. I imagine it probably did.

22 Q. All right. Well just so we're clear, this
23 particular document in the portions you read talked
24 about the application of ammonia technology to try
25 and create products that had the same kind of smoker

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1 response as Marlboro.

2 A. That was, I think, what was -- the intention
3 was, to -- to find a cigarette that would actually
4 have the same preference among consumers to Marlboro,
5 or indeed I think even to be superior or preferred by
6 smokers to Marlboro.

7 Q. All right. And various different ways that the
8 BAT Group tobacco companies had applied ammonia
9 technology are discussed in this document; aren't
10 they?

11 A. Yes, they are.

12 Q. And at the time of this conference, Brown &
13 Williamson was using ammonia technology on the
14 cigarettes that it was selling in the United States;
15 right?

16 A. In --

17 On some of the cigarettes, yes.

18 Q. All right. They were using it in Kools; right?

19 A. Where do you find that? I -- I thought I saw
20 something contrary to that.

21 Q. Well I'm -- I'm noticing at the bottom of page
22 915 it says, "Increased smoke ammonia markedly
23 reduces menthol perception with Kool Milds." Do you
24 see that, sir?

25 A. Yes. That's why I think it probably isn't used

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- 1 or wasn't used on Kool, because Kool is a menthol
2 brand and I think the ammonia technology may not have
3 been appropriate to menthol brands. So I'm not
4 entirely sure it was used or is used on Kool, but it
5 was, I think, being used on other products.
- 6 Q. Now sir, Kool used EBR; right?
- 7 A. Again, where are you finding that?
- 8 Q. I'm looking at the top of page 912 where it says
9 "Kool XL uses EBR."
- 10 A. 912. "Kool XL," which is --
11 Yes, "Kool XL uses EBR," that's what it says.
- 12 Q. And EBR is a form of ammonia technology.
- 13 A. I believe it's more of recon. If it's
14 ammoniated, I can't say off the top of my head, but
15 it may be.
- 16 Q. If we turn to the next page, immediately
17 preceding the last paragraph it says, "Mr. Fisher
18 described the performance of AT tools (EBR, CPL)" --
- 19 A. Thank you, yes.
- 20 Q. -- "that B&W now uses in its domestic
21 production."
- 22 A. I appreciate you referring me to that. Yes,
23 that would indeed appear to be one of the ammoniated
24 recons.
- 25 Q. So you would agree that EBR and CPL were ammonia

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1 techniques used by Brown & Williamson; right?

2 A. CPCL, yes. That's what Mr. Fisher seems to say.

3 Q. Let me -- let me rephrase that question.

4 You would agree that EBR and CPCL were ammonia
5 technology techniques that were applied to Brown &
6 Williamson on its marketed cigarettes; right?

7 A. Yes. But I just want to make the point that it
8 necessarily -- wasn't necessarily all our marketed --
9 marketed cigarettes, but it was used in some
10 cigarettes.

11 Q. All right. Now we have established that Kool XL
12 used EBR; right?

13 A. Yes, we have.

14 Q. And that Kent also used a different ammonia
15 technology technique; right?

16 A. One moment.

17 MR. McCORMICK: Could you direct the
18 witness, Ms. Wivell, to --

19 A. I think it's the line immediately preceding the
20 Kool XL reference. And just for the record, I mean
21 Kent is not a brand that we own in the U.S. domestic
22 market, it's a brand that's owned by Lorillard, but
23 we do own the rights to Kent in overseas markets. So
24 this would be a reference to Kents sold in non -- to
25 non-U.S. -- in non-U.S. markets.

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1 Q. But you would agree, sir, wouldn't you, that
2 Brown & Williamson has utilized ammonia technology
3 techniques of different kinds in the cigarettes that
4 it markets in the United States?

5 A. Absolutely.

6 Q. How long has it done so?

7 A. Well I think we began this understanding of
8 ammonia technology in -- sometime in the early to
9 mid-'80s.

10 Q. And you understand that since that time up to
11 and including today, the cigarettes that Brown &
12 Williamson sells in the United States use ammonia
13 technology?

14 A. I couldn't say when it actually began, but I
15 could say that certainly today we continue to use
16 ammonia technology to enhance the flavor of our
17 brands.

18 Q. Now we have talked about EBR and CPCL as one
19 type of ammonia technology that Brown & Williamson
20 uses; right?

21 A. Yes.

22 Q. We've talked about diammonium phosphate, DAP or
23 D-A-P, as another form of ammonia technology; right?

24 A. Indeed.

25 Q. Brown & Williamson also uses urea, the

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1 application of urea to tobacco as an ammonia

2 technology technique; doesn't it?

3 A. I believe urea is an additive that's been used

4 on certain brands. I couldn't speak to which.

5 Q. All right. And are there any other ammonia

6 technology techniques that Brown & Williamson has

7 used on its marketed cigarettes?

8 A. I can't speak to that affirmatively, but I think

9 that's fairly all-encompassing, but I'd have to

10 check.

11 Q. Now sir, according to this document there was

12 information provided at the conference about the use

13 of ammonia technology by Brown & Williamson's

14 competitors; right?

15 A. Yes, I saw a paragraph on that.

16 Q. And according to the information that's

17 provided, Liggett was the only U.S. manufacturer that

18 Brown & Williamson had no use of any kind of ammonia

19 technology with; right?

20 A. Could you refer me again to the paragraph? I

21 think I read that, but you could just help me by

22 showing me where that is.

23 Q. Could you direct your attention to the top of

24 page 913.

25 A. That's what it says, "Liggett is the only --

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1 Liggett is the only U.S. manufacturer for which we
2 have no evidence of any AT use."

3 Q. So with everyone else, all the other U.S.
4 Manufacturers, Brown & Williamson had evidence that
5 they were also using ammonia technology; right?

6 A. That was what our understanding appears to have
7 been, yes.

8 MS. WIVELL: I need to take a brief break.

9 THE WITNESS: Very good.

10 THE REPORTER: Off the record, please.

11 (Recess taken.)

12 BY MS. WIVELL:

13 Q. Sir, before we went off the record we were
14 talking about ammonia treatment.

15 Ammoniation continues in B.A.T -- B&W's marketed
16 cigarettes up to today; doesn't it?

17 A. Yes, it does.

18 Q. All right. And sir, the subject of the use of
19 ammonia was one that was approved by the TSRT; wasn't
20 it?

21 MR. McLAUGHLIN: Objection to the form.

22 A. I don't believe it was an approved by the TSRT,
23 no.

24 Q. Well sir, it was a subject that was thought to
25 be very important by the chairman of B.A.T

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1 Industries; wasn't it?

2 A. By --

3 MR. McLAUGHLIN: Object to the form.

4 A. I don't have any knowledge of what the chairman
5 of B.A.T Industries thought about ammonia technology,
6 but I'm sure we would in Brown & Williamson have
7 communicated through the TSRT our knowledge and
8 interest in ammonia technology, and that might have
9 been something that was found of interest by other
10 TSRT team members.

11 Q. Now sir, you would agree that the TSRT minutes
12 would tell us a lot about what the chairman thought
13 was important; right?

14 A. They might be indicative of what the chairman
15 thought, but not necessarily a total true reflection,
16 but --

17 Q. Well based on your experience as part of the
18 Tobacco Strategy Group, the successor to the TSRT,
19 you found that the minutes that were passed out after
20 the meeting generally accurately reflected events
21 that occurred at that meeting; right?

22 A. Well I don't want to be picky, but no, not
23 always. They obviously tended to identify what
24 the -- what the discussions had been and the topics
25 broadly that had been discussed.

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1 Q. Sir, showing you what's previously been marked
2 as Plaintiffs' Exhibit 634, this is a document that
3 bears the Bates number 201831067; right?

4 A. That's correct.

5 Q. At the bottom of the page -- I'm sorry, strike
6 that.

7 Exhibit 634 are the minutes of the TSRT meeting
8 that was held November 10th, 1989; right?

9 A. It appears to be so, yes.

10 Q. All right. And at the bottom of the page there
11 is a note concerning the chairman's beliefs about the
12 importance of introducing ammonia technology; right?

13 A. Can I read the paragraph?

14 Q. Certainly, sir.

15 A. Thank you.

16 Well he clearly stressed the importance of
17 introducing ammonia treatment as the means for
18 producing an authentic U.S. taste, is what the minute
19 says.

20 Q. All right. And by the "he," you're referring to
21 the TSRT chair; right?

22 A. I think --

23 Yes. Invariably I think Patrick Sheehy took the
24 chair of these discussions.

25 Q. All right. And so that reference to the

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1 chairman stressing the importance of introducing
2 ammonia treatment as a means of producing an
3 authentic U.S. taste, that refers to Patrick Sheehy;
4 right?

5 A. Yes.

6 MR. McLAUGHLIN: Object to the form.

7 A. I believe it refers to Patrick Sheehy, but I
8 have no way of saying.

9 Q. All right. And now, sir, you would agree that
10 ammonia treatment was applied in different forms
11 throughout the BAT Group tobacco companies; right?

12 A. I'm sorry, I was looking at the paragraph.
13 Could you just repeat the question?

14 Q. Certainly.

15 You would agree that ammonia technology in
16 different forms was applied throughout the BAT Group
17 tobacco companies.

18 A. Well I think that very paragraph you referred me
19 to suggested that one of the companies in the BAT
20 Group, B.A.T Industries group, Souza Cruz, was not
21 doing so.

22 Q. But we know from the ammonia technology minutes
23 that we were looking at a little bit ago that they
24 eventually did apply ammonia technology; right?

25 A. Let me just double check for you. I think I

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1 read that in relation to a brand that Souza Cruz was
2 exporting. Is that not right? Hollywood Export, is
3 that what I saw?

4 Can you turn -- refer me to the paragraph?

5 Q. Yes, sir. Do you see on the page that ends with
6 Bates number 912, --

7 A. 912.

8 Q. -- the paragraph that begins "AT use in Souza
9 Cruz brands was described by Mr. Rodrigues?"

10 A. Oh. Is it the second paragraph down?

11 Q. Yes, sir.

12 A. Yes.

13 Q. All right. And that was --

14 They discussed their ammonia technology process
15 using the code name ANSIRO; right?

16 A. Yes. They say -- they talk about it as being
17 casings, though, and they don't use any reconstituted
18 tobacco.

19 Q. Now casings, that's something that's applied to
20 tobacco before it's made into a cigarette; right?

21 A. It's applied during the process of making
22 cigarettes.

23 Q. Now sir, would you turn your attention to the
24 page of -- page two of Exhibit 634.

25 A. Yes.

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- 1 Q. Would you read paragraph 12 to yourself.
- 2 A. Thank you.
- 3 Yes, I've read that.
- 4 Q. Now that paragraph talks about low nicotine
5 content cigarettes; doesn't it?
- 6 A. Yes, specifically cigarettes manufactured by
7 Philip Morris.
- 8 Q. All right. And the note says, "It was noted
9 that experience had shown that there was little
10 demand for a cigarette with a very low nicotine
11 content...." Right?
- 12 A. That's what the words say, yes.
- 13 Q. And it goes on to say, "The Group had the
14 technology to produce cigarettes of this type but it
15 was not thought worthwhile to do so." Right?
- 16 A. That's what it says.
- 17 Q. Now sir, you would agree that Brown & Williamson
18 today has the technology to produce a low nicotine
19 cigarette.
- 20 A. Not only do we have the technology, we do
21 produce a low nicotine cigarette.
- 22 Q. And as a matter of fact, Brown & Williamson has
23 the technology to produce a no-nicotine cigarette;
24 doesn't it?
- 25 A. You know, I'm not entirely sure we have the

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1 technology to remove all nicotine from tobacco,
2 but -- because even decaffeinated coffee, for
3 example, still has caffeine in it. I'd have to
4 double check that, but I imagine we have -- we have
5 the technology to produce in Carlton the lowest tar
6 and nicotine cigarette on the market today.

7 Q. Did we decide that Kool Super Long did use
8 ammonia technology?

9 A. I have a funny feeling that we don't use ammonia
10 technology on Kool, but I'd have to double check with
11 my -- my leaf department. Largely I think because,
12 you know, principal taste on the Kool cigarette is --
13 is not so much the tobacco as the menthol.

14 Q. Would you do that and report back to us tomorrow
15 so that we can answer this question definitely one
16 way or the other?

17 A. I can certainly try to make contact with people
18 and see if I can get an answer for you, by all means.

19 (Plaintiffs' Exhibit 1488 was marked
20 for identification.)

21 BY MS. WIVELL:

22 Q. Sir, showing you what's been marked as
23 Plaintiffs' Exhibit 1488, what is that?

24 A. It appears to be a pack of Super Long -- Kool
25 Super Long 100s in soft pack.

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- 1 Q. All right.
- 2 A. Soft pack as opposed to the box packaging.
- 3 Q. Now sir, taking a look at Exhibit 1488, can we
- 4 tell whether or not ammonia technology is used on the
- 5 cigarette from looking at that pack?
- 6 A. We don't reference any of the ingredients in
- 7 the -- in any of our packs of cigarettes, be it
- 8 whether it's ammonia technology or any of the other
- 9 constituents of our cigarettes.
- 10 Q. Now you would agree that Viceroy does use
- 11 ammonia technology; right?
- 12 A. I'd have to check, but I would imagine that that
- 13 was the case.
- 14 Q. All right. And if I pulled out a package of
- 15 Viceroy cigarettes and marked -- had the court
- 16 reporter mark them, we wouldn't be able to tell from
- 17 the package whether ammonia technology was used in
- 18 those cigarettes either; would we, sir?
- 19 A. Well as I said, we don't mention anything about
- 20 the ingredients or -- of our cigarettes on the pack,
- 21 and so that would apply to all aspects of the blend
- 22 and the manufacturing process.
- 23 Q. So you would agree that there's no way that a
- 24 consumer who buys a pack of Brown & Williamson
- 25 cigarettes would be able to know what's in those

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- 1 cigarettes; right?
- 2 A. Well I wouldn't agree with that, no.
- 3 Q. Well just from looking at the package, what
- 4 information does Exhibit 1488 give us about what is
- 5 contained in a Kool cigarette, other than saying that
- 6 it's mentholated?
- 7 A. Well it has a toll-free 1-800 number which you
- 8 can ring and ask someone at the end of that telephone
- 9 what is in a Kool cigarette.
- 10 Q. And if I were to do that --
- 11 A. Uh-huh?
- 12 Q. -- and call that toll-free number, I would not
- 13 be given the list of ingredients that is in a Kool
- 14 cigarette; would I, sir?
- 15 A. Well directly, no, because then we'd have all
- 16 our competitors on the phone wanting to know how to
- 17 make Kool cigarettes. But you would be told what is
- 18 in the cigarette. And there are indeed, of course, a
- 19 number of ingredients that are commonly used in
- 20 cigarettes, and we would refer you to probably the
- 21 list we published in 1994.
- 22 Q. Well sir, Brown & Williamson has never publicly
- 23 published the list of ingredients used in its
- 24 cigarettes; has it?
- 25 A. Well I believe the industry has.

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1 Q. Publicly published?

2 A. Yes. I believe we've referenced publicly two
3 things: one, a list of all the ingredients that go
4 into cigarettes throughout the U.S.; and also along
5 with that a toxicological report confirming that all
6 the ingredients are appropriate for use in
7 cigarettes.

8 Q. Sir, aren't you referring to the reports that
9 were privately provided to the federal government?

10 A. No. I believe that was in 1984, ten years
11 earlier, when we did indeed make available to Health
12 and Human Services the same list. But in 1994 we
13 made it public.

14 Q. So it would be fair to say that before 1994,
15 then, a consumer who wanted to know what was in a
16 package of Brown & Williamson cigarettes wouldn't be
17 able to find out that information; right?

18 A. Again, I don't honestly know when we first
19 started putting the 1-800 number on our packs and
20 whether at that time we would have given that
21 information, but I would be speculating if I said --
22 would give you an --

23 Q. Sir --

24 A. -- answer to that question.

25 Q. I'm sorry.

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1 Isn't it true that a consumer could find out
2 more about the ingredients in a package of cookies
3 than they can about what they're inhaling into their
4 lungs when they smoke a Brown & Williamson cigarette?

5 A. I have no idea whether that's an appropriate
6 comparison. As I said, there is a 1-800 number, and
7 consumers not only are invited to use it, they
8 regularly do. And I think it's a service that's much
9 appreciated by our consumers.

10 Are you going to offer me a cookie? That's very
11 kind.

12 And it's -- it's something, as I said, quite
13 seriously, it's -- it -- we do take seriously,
14 indeed, to inform our consumers as best we can about
15 any concerns or issues that they have.

16 (Plaintiffs' Exhibit 1489 was marked
17 for identification.)

18 BY MS. WIVELL:

19 Q. Sir, showing you what's been marked as
20 Plaintiffs' Exhibit 1489, it's a package of OREO
21 cookies; isn't it?

22 A. Yes, made by RJR Nabisco.

23 Q. And on the side of that package there is a list
24 of ingredients; right?

25 A. Nutritional facts I think it's headed as, right.

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1 Q. All right.

2 A. And ingredients. I beg your pardon, they have
3 nutritional facts and ingredients.

4 Q. Now sir, you would agree that a person wanting
5 to know what was in that package of OREO cigarettes
6 would be --

7 (Laughter.)

8 Q. Oh my.

9 A. We could try to light it if you like.

10 Q. Well we know people wouldn't buy it because it
11 doesn't have nicotine; right?

12 A. Well I don't know what the ingredients are. Let
13 me read.

14 Q. All right. Let's go back to my question.

15 You would agree that a person wanting to know
16 the ingredients on -- or that were used in these OREO
17 cookies would be able to find that out by just
18 reading the side of Exhibit 1489; right?

19 A. Well there is certainly a list of ingredients in
20 OREO cookies printed on the pack by RJR Nabisco,
21 you're quite right.

22 Q. Now sir, is there anything that prevents Brown &
23 Williamson from putting a similar list of ingredients
24 on its cigarette packages?

25 A. Is there anything that actually prevents us

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1 doing that?

2 Q. Yes.

3 A. Well apart from our concern to maintain our
4 trade secrets, I would -- I'm not aware of any legal
5 constraint in that.

6 Q. Just so we're clear here, your last answer was
7 no, there's nothing legally that prevents you from
8 putting the list of ingredients in your cigarettes on
9 those packages; right?

10 A. Well as I said, to the best of my knowledge
11 there is no legal constraint. I don't think there
12 is.

13 Q. Now sir, this list of ingredients that you
14 mentioned that your company made public in 1994, if I
15 were to go to that list and look up Kool cigarettes,
16 would I find the exact ingredients that are there?

17 A. Well no, I was trying to explain earlier that
18 obviously these blends of tobaccos and other
19 additives is -- is -- is a recipe that we developed
20 over a number of years, and it's -- it's a trade
21 secret, and we don't want our competitors to know how
22 we go about making Kool such a great cigarette.

23 Q. And this list of ingredients, that's the list of
24 all the ingredients that are used in all of your
25 cigarettes; aren't they, sir?

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1 A. I believe it's the list of 550 ingredients
2 generally that are in use by tobacco manufacturers in
3 the U.S. That's right.

4 Q. So I wouldn't be able to find, if I looked at
5 that list, the specific ingredients which go into a
6 Kool cigarette for example; would I?

7 A. If you specifically wanted to know how we make
8 Kool cigarettes, we wouldn't tell you because it's a
9 trade secret, you're quite right. But we have
10 indicated to the public that this is the range of
11 ingredients that might go into it.

12 Q. That might go into it; right?

13 A. Well because they are the ingredients that are
14 used in cigarettes manufactured in the U.S.

15 Q. And in fact this -- this list of 550 some
16 ingredients is not just a list of ingredients that
17 Brown & Williamson uses, it's a list of ingredients
18 that all the cigarette manufacturers use; right?

19 A. That's right. That's I think how -- how I just
20 explained it.

21 Q. Now sir, are 550 different ingredients used in
22 Kool cigarettes?

23 A. No.

24 Q. How many ingredients go into Kool cigarettes?

25 A. Directly I couldn't tell you, but obviously

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1 tobacco and menthol, and probably, I don't know,
2 other ingredients.

3 Q. Now sir, can you direct me to any public
4 statement where Brown & Williamson has admitted to
5 the public that it uses ammonia in the cigarettes
6 that they may be smoking?

7 A. Well ammonia technology is a commonly used
8 technology to enhance taste throughout the food
9 industry, and I wouldn't necessarily think that that
10 was something that would require disclosure as such.

11 Q. Well sir, can you direct me to a single public
12 statement that Brown & Williamson made on the issue
13 of its cigarettes that told people we're using
14 ammonia in our cigarettes?

15 A. Well I think I referenced just now the 1994
16 disclosure, public disclosure of ingredients on --
17 in -- in cigarettes, and that I'm sure would have
18 included ammonia compounds.

19 Q. And that's because ammonia is considered an
20 additive; right?

21 A. It is used as an additive, certainly.

22 Q. Now sir, could you go back to Exhibit 1485 that
23 we looked at really early this morning.

24 A. Oh-oh. Is that one that was in this pile?

25 Q. It's a news release dated 1994.

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1 A. The one-pager?

2 Q. Yes, sir.

3 A. I should be able to find that. But I can't. I
4 can't find it.

5 Q. All right. Well let me --

6 MR. McCORMICK: I can't find mine.

7 THE WITNESS: I think you're coming to
8 yours.

9 MR. McCORMICK: There.

10 THE WITNESS: There. May I borrow yours?

11 MR. McCORMICK: Yes, but put it back,
12 please.

13 Q. Exhibit 1485 is that press release dated May
14 10th, 1994, that we originally looked at for its
15 paragraphs concerning claims about addiction; right?

16 A. Yes, that's right. That's the document.

17 Q. Now at the very bottom in the last paragraph it
18 says, "Concerning another unsupportable allegation,
19 Brown & Williamson does nothing in the manufacture of
20 its tobacco products that increases the level of
21 nicotine above that which is naturally found in the
22 tobacco plant, nor does it artificially increase
23 nicotine;" right?

24 A. That's right.

25 Q. Okay. Those two statements are right; aren't

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1 they?

2 A. That's my understanding.

3 Q. All right. But this press release does not tell
4 people who might read it that Brown & Williamson does
5 use ammonia technology in its cigarettes; right?

6 A. Well ammonia technology in its cigarettes --
7 thank you -- doesn't, as I understand it, affect the
8 amount of nicotine in cigarettes.

9 Q. Well it does affect the form of the nicotine,
10 though; doesn't it, sir?

11 A. I don't believe it affects the form of the
12 nicotine in a way that would alter the absorption of
13 nicotine by the smoker.

14 Q. Well sir, we've seen documents that -- from
15 Brown & Williamson's own files today that show that
16 the effect of ammonia does -- is to change the form
17 of the nicotine; right?

18 A. Well we've seen some documents which I think I
19 previously expressed to be, to my understanding at
20 least, a hypothesis on which B.A.T Co. and possibly
21 Brown & Williamson as well, or vice versa even,
22 were -- were operating, but it's --

23 My understanding is that's not the case.

24 Q. Well sir, you are aware that your predecessor,
25 Mr. Thomas Sandefur, went before the Senate and

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1 talked about the subject of nicotine manipulation;
2 right?

3 A. Well I think he appeared before the -- a
4 congressional subcommittee.

5 Q. I'm sorry.

6 A. But you -- you may be right, he may have also
7 appeared in a Senate hearing.

8 Q. Let me rephrase the question.

9 You're aware that your predecessor, Mr. Thomas
10 Sandefur, went before a congressional subcommittee
11 and talked about the subject of nicotine
12 manipulation; correct?

13 A. The so-called Waxman inquiry.

14 Q. Yes.

15 A. Yes, that's correct.

16 Q. You've read his testimony there, sir; haven't
17 you?

18 A. I've certainly looked at the testimony. I can't
19 say I've read every line, but I -- I've certainly
20 read most of his.

21 Q. Now sir, Mr. Sandefur did not disclose to the
22 Waxman Committee that Brown & Williamson used ammonia
23 in its cigarettes; did he?

24 A. I frankly don't know -- don't recall.

25 Q. You don't recall one way or the other; is that

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1 right?

2 A. I don't recall recall one way or the other.

3 Q. All right. You know that he denied that
4 cigarette smoking was addictive when he testified
5 before Waxman; right?

6 A. He said that he did not believe that smoking was
7 addictive, and I certainly believe that is also a
8 term that I wouldn't use in relation to smoking.

9 Q. And you understand that his claim that cigarette
10 smoking was not addictive was publicized throughout
11 the United States; right?

12 A. I think it was on, what would be it, C-SPAN, so
13 I imagine it was available to anyone who wanted to
14 watch across the United States.

15 Q. And it was also picked up and repeated in
16 newspapers throughout the United States; wasn't it,
17 sir?

18 A. I think it was also the subject of many
19 newspaper articles. You're probably quite right.

20 Q. All right. And sir, isn't it -- I'm sorry.
21 Strike that.

22 When Mr. Sandefur testified before the Waxman
23 hearing, he did not disclose the documents that we
24 saw earlier today that referred to cigarette smoking
25 as addictive; did he?

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1 MR. McCORMICK: I'm going to object, Ms.
2 Wivell, that -- to this, this lack of foundation and
3 very unfair. There is no suggestion that you pointed
4 us to that there -- that such documents were called
5 for, such testimony was called for.

6 MS. WIVELL: I object to your violation of
7 the court's order, sir.

8 MR. McCORMICK: It's not a violation. I've
9 been extremely patient. I have said very, very
10 little. That this is an unfair line of questioning,
11 and you know it.

12 MS. WIVELL: You have my question in mind,
13 sir?

14 THE WITNESS: You may have to repeat it.
15 Q. When Mr. Sandefur testified before the Waxman
16 hearing, he did not disclose the documents that we
17 saw earlier today that referred to cigarette smoking
18 as addictive; did he?

19 A. I believe a considerable number of documents
20 were called for by the committee and were indeed
21 supplied by Brown & Williamson.

22 Q. That --

23 A. And I really have no way of telling, sitting
24 here today, whether any of the documents you referred
25 me today were either called for or voluntarily handed

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1 over. I have no idea.

2 Q. Those documents were called for after Mr.

3 Sandefur testified, though; didn't he?

4 A. I frankly don't know.

5 Q. But just so we're clear here, when Mr. Sandefur

6 testified before the Waxman Committee, he did not

7 mention the documents we saw today that referred to

8 cigarette smoking as addictive; right?

9 MR. McCORMICK: I'm going to make the same
10 objection.

11 A. I don't recall the testimony that well.

12 I think I actually played some of the C-SPAN
13 videos rather than actually read the transcripts of
14 the testimony that Tommy Sandefur gave, and I
15 certainly don't recall any reference to that. But I
16 man be wrong, it may appear in there somewhere.

17 Q. Now sir, you understand that in 1996 --

18 A. Uh-huh.

19 Q. -- the Food and Drug Administration asserted
20 authority over cigarettes as drugs; right?

21 A. They asserted authority over the -- over the
22 cigarette manufacturers, yes, certainly.

23 Q. In other words, they used the portion of the
24 Food, Drug and Cosmetic Act that defined a drug as
25 something intended to affect the structure or

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1 function of the body of man, they used that portion
2 of the federal statute to assert authority over
3 cigarette manufacturers; right?

4 A. That's my broad recollection of what they did,
5 yes.

6 Q. All right. And when the Food and Drug
7 Administration asserted authority over the cigarette
8 manufacturers, the cigarette manufacturers objected;
9 right?

10 A. It was the first time, I think --

11 Yes, that's right, we did object. Just to
12 shorten the answer. Yes, we did object.

13 Q. And sir, at the same time that the Food and Drug
14 Administration asserted authority over the cigarette
15 manufacturers -- I'm sorry.

16 They did so asserting that cigarettes were drug-
17 delivery systems; right?

18 A. You're going back to what the FDA said?

19 Q. Yes, sir.

20 A. Yes, I think that's what they said. And they
21 also proposed, I think, that we should put that on a
22 pack of cigarettes.

23 Q. Just so we're clear, because I wasn't -- and I
24 apologize, it's getting a little late in the day and I
25 have a tendency of getting a little foggy. Let me

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1 rephrase the question.

2 When the Food and Drug Administration asserted
3 authority over the cigarette manufacturers, they did
4 so asserting that cigarettes were drug-delivery
5 systems; right?

6 A. That's right.

7 Q. Okay. And the cigarette manufacturers objected;
8 right?

9 A. We did indeed suggest that this was an unusual
10 and unfounded way of -- of -- of taking regulatory
11 authority without congressional support, that's
12 right.

13 Q. The cigarette manufacturers did a bit more than
14 just suggest that it was unusual; don't --

15 A. Well we took them to court, absolutely, yes.

16 Q. You sued the FDA; didn't you?

17 A. Yes. We said you haven't got authority to take
18 this action.

19 Q. And the federal --

20 And by the way, that suit was brought by the
21 cigarette manufacturers in the state of North
22 Carolina.

23 A. I believe it was, yes.

24 Q. And the judge agreed with the Food and Drug
25 Administration, that cigarettes would be considered a

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1 drug-delivery system under the definition as supplied
2 by the Food, Drug and Cosmetic Act; right?

3 A. I think he found in favor in the FDA in relation
4 to that aspect, and found against the FDA in relation
5 to their ability to control advertising, as I
6 recall. And both the FDA and ourselves have now
7 appealed the matter up to the Fourth Circuit.

8 Q. All right. Now sir, you would agree that it has
9 been known within Brown & Williamson for years that
10 nicotine affects the brain; right?

11 A. That it has a pharmacological impact -- effect
12 rather, yes. I think that's something that's widely
13 known in the scientific if not the general public.

14 Q. And you would agree that the Food and Drug
15 Administration found that in asserting its authority
16 over the cigarette manufacturers, that the cigarette
17 manufacturers intended nicotine to have that effect;
18 right?

19 A. Well I assume that's what they found because
20 that's what --

21 I assume that's what the FDA internally
22 determined because that was the claim that they made
23 in terms of asserting their authority.

24 Q. Well sir, have you read the Federal Register
25 statement made by the Food and Drug Administration

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1 when it asserted its authority in nineteen eighty --
2 1996?

3 A. I have read certain parts of it certainly,
4 because they have been referred to in pleadings
5 before Judge Olson in North Carolina, as you said,
6 and I've read some of those pleadings.

7 Q. Now sir, isn't it true that the working
8 hypothesis that ammonia technology increased the free
9 nicotine in cigarette smoke came to a screeching halt
10 when the FDA asserted its authority over cigarettes?

11 A. Could you ask that question again? I didn't
12 catch what you said.

13 Q. All right. Isn't it true that the hypothesis
14 which had been a working hypothesis for years --

15 A. Ah.

16 Q. -- within Brown & Williamson changed when the
17 Food and Drug Administration asserted authority over
18 cigarettes?

19 A. I'm not sure when we realized that we were in a
20 blind alley relative to this issue, but -- so I can't
21 answer that. I would have thought certainly long
22 before, but I don't know.

23 Q. Have you read Mr. Reynolds' testimony about the
24 effect of the FDA's assertion of authority over
25 cigarette manufacturers and its relationship to the

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1 views about ammonia technology?

2 A. Not directly, no.

3 Q. All right. Sir, we have talked for a bit in
4 this deposition about low tar/low nicotine
5 cigarettes.

6 A. Uh-huh.

7 Q. Do you recall that subject?

8 A. Yes, indeed.

9 Q. And would you agree that one of the objectives
10 that the BAT Group companies have had for a number of
11 years was to try and reassure cigarette smokers about
12 their worries of health problems by marketing low
13 tar, supposedly low nicotine cigarettes?

14 MR. McLAUGHLIN: Object to the form.

15 A. No, I wouldn't characterize our activities that
16 way. I think what Brown & Williamson certainly was
17 doing and I'm sure other BATCo and other companies
18 were doing was twofold, really, one was responding to
19 clarion calls from both sides of the Atlantic, both
20 the U.K. and the U.S., to reduce the tar and nicotine
21 deliveries of cigarettes, and secondly, to appeal
22 to -- to respond to -- to consumer demands for -- for
23 lighter cigarettes.

24 (Discussion off the stenographic record.)

25 (Plaintiffs' Exhibit 1490 was marked

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1 for identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as
4 Plaintiffs' Exhibit 1490, this is a document that
5 bears the Bates number 680082080; right?

6 A. Yes.

7 Q. And it is entitled "SMOKING & HEALTH ITEM 7:
8 THE EFFECT OF -- ON MARKETING;" right?

9 A. That's the heading.

10 Q. Now sir, I also see some stamps on here that say
11 "REDACTED." As a lawyer, what do you understand
12 that to mean?

13 A. Well I didn't understand what that meant until I
14 came to the U.S., but I understand it means that
15 parts of the document may be regarded as not
16 responsive to plaintiffs' requests for information,
17 and also perhaps that -- you know, and therefore,
18 because they contain information that might be
19 commercially sensitive, are allowed to be blanked
20 out.

21 Q. All right. Just so we're clear, who blanked it
22 out?

23 A. I don't --

24 In this instance I don't know.

25 Q. Not personally, but who would have done the

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1 blanking out or the redaction?

2 A. I assume the redaction would have been
3 undertaken by the -- the company providing the
4 document. I suppose in this instance you're going to
5 tell me it was Brown & Williamson, but I don't know.

6 Q. All right.

7 A. Oh no, P. L. Short. This presumably is a BATCo
8 document.

9 Q. Why do you say that, sir?

10 A. Well P. L. Short, as I recall, was a marketing
11 executive in BATCo.

12 Q. All right. He was head of the public relations
13 department; wasn't he?

14 A. No, I don't believe he was.

15 Q. All right. He was in the public relations
16 department at Millbank.

17 A. Well unless you can confirm that to me
18 independently, I would say he was a marketing
19 executive in -- in -- in Millbank within BATCo. I
20 think his name was Phillip Short.

21 Q. All right.

22 A. And I think he was a marketing individual.

23 Q. Just so we're clear, Millbank is the name of the
24 original BATCo office that was on Millbank street in
25 London; right?

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1 A. Yes. The street is actually just called
2 Millbank, and the office was an office called
3 Westminster House. If you want some history, there
4 is still a stone there that bears the name James
5 Buchanan Duke, because he laid the foundation stone
6 in that building.

7 Q. All right. Why don't you take a moment and
8 review Exhibit 1490.

9 A. Yes, ma'am. The whole thing?

10 MR. McCORMICK: You want him to read this
11 whole thing?

12 MS. WIVELL: Well I'm going to be referring
13 to the first page, the page that ends with Bates
14 number 085, and the page that ends with Bates number
15 086.

16 THE WITNESS: Okay, I'll read the whole
17 thing.

18 THE REPORTER: We have to change tape. Off
19 the record, please.

20 (Discussion off the record.)

21 MR. McCORMICK: Can I ask, back on the
22 record, what were the pages again that you asked him
23 to refer to?

24 MS. WIVELL: The first -- the one that ends
25 with 085, and the one that ends with 086.

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1 MR. McCORMICK: 086. All right, thank
2 you.

3 A. Well I've read the document.

4 Q. All right. You have now read Exhibit 1410 --
5 I'm sorry.

6 You've now read Exhibit 1490; right?

7 A. Yes. That's what I've just read.

8 Q. All right. And the document talks about a
9 smoking and health marketing strategy that had been
10 agreed to by the marketing directors from North
11 America, Australia, Europe and Brazil, along with
12 those from BATCo; right?

13 A. Well it talks about new marketing -- sorry,
14 market -- start again.

15 It talks about "the new policy for marketing
16 agreed at Hot Springs, strategies were evolved which
17 were 'positive and explicit in the field of Smoking &
18 Health."

19 Q. All right.

20 A. Developed as the result of the senior marketing
21 conference.

22 Q. And marketing directors, including those from
23 the North American tobacco companies, had endorsed
24 the policy that's described in Exhibit 1490; right?

25 A. I don't read it quite that way, but there seems

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1 to -- I don't --

2 I don't quite know how to read this document,
3 I'm afraid. It -- I just have to let you know, this
4 was before I enjoined BATCo. I think the document
5 predates my arrival, and certainly the conferences
6 do. Yes.

7 Q. But just so we're clear, the first paragraph
8 talks about a new policy; right?

9 A. Appears to.

10 Q. It talks about a policy that was agreed at Hot
11 Springs; right?

12 A. That also appears to be what they're talking
13 about.

14 Q. And it talks --

15 A. Although -- I'm sorry. Can I just contradict
16 you there? It talks about the policies being
17 developed as a result of the senior marketing
18 conference held at Chelwood, which is in England.

19 Q. Well just so we're clear here, sir, the first
20 sentence says, "In line with the new policy for
21 marketing agreed at Hot Springs, strategies were
22 evolved which were 'positive and explicit in the
23 field of Smoking & Health." Right?

24 A. That's right.

25 Q. Goes on to say, "These were developed as the

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1 result of a Senior Marketing Conference - 'Marketing
2 in the '80s', held at Chelwood in October 1976, and
3 attended by the No. 1s and Marketing Directors from
4 North America, Australia, Europe and Brazil;" right?

5 A. That's correct.

6 Q. Now just so we're clear, the phrase "No. 1s"
7 refers to the CEOs of the companies that were
8 involved; right?

9 A. That, I believe, is what the -- what it refers
10 to, yes.

11 Q. All right. And it goes on to say that this
12 policy was endorsed by the tobacco division board;
13 correct?

14 A. That's what it says.

15 Q. Now that's the BATCo board.

16 A. That would be the BATCo board.

17 Q. All right. And then it was distributed to all
18 delegates of the CAC I. Now the CAC is the
19 Chairman's Advisory Conference; right?

20 A. Or Council, either --

21 Chairman's Advisory something, I agree.

22 Q. All right. So basically it would be fair to say
23 that the policy that's set forth in Exhibit 1490 was
24 adopted by all of these different groups and then
25 passed out to be implemented; right?

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1 A. Yes. But this is not the document that was
2 passed out. That was the point I think I was trying
3 to make.

4 Q. All right. Now it says --

5 This document summarizes the position; doesn't
6 it?

7 A. I'm not sure what this document does. I had
8 some difficulty understanding what it was trying to
9 do.

10 Q. Well just so we're clear, it says at the end of
11 the second paragraph, "In summary, the position we
12 have arrived at is this, on marketing in the '80s,
13 resulting from the two Conferences," and then it --
14 there's a dash and it sets forth the position; right?

15 A. Well I don't try to argue against that, but I
16 had some difficulty because it seemed to reference
17 something, and then --

18 I don't know. I didn't have a great deal of
19 luck in really understanding what this document was
20 about. But I -- I'm following what you're telling
21 me.

22 Q. All right. After the portion that I just read
23 there is a heading that says "Future Prospects;"
24 right?

25 A. That's what it says, yes.

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1 Q. And the last sentence in that paragraph says,
2 "This means that B.A.T will not remain on the
3 defensive, by simply reacting to alleged 'health'
4 hazards and related competitive challenges: instead,
5 we shall actively seek out all worthwhile prospects
6 for brand and product reassurance in marketing
7 throughout the world;" right?

8 A. That's what it says.

9 Q. All right. And you would agree, then, that this
10 document references a worldwide BAT Group tobacco
11 marketing strategy.

12 MR. McLAUGHLIN: Objection to form.

13 Q. Right?

14 A. No, I don't think it does necessarily. I mean I
15 would like to see what this thing that was circulated
16 to everybody says because that seems to be what was
17 the strategies that were agreed.

18 Q. All right. Well --

19 A. Anyway, I don't want to be unhelpful, but this
20 doesn't seem to be quite what it is.

21 Q. All right. Well let's see what else the
22 document says. If you turn to the page that ends
23 with Bates number 083 --

24 A. Yeah.

25 Q. -- there is at point four "Organisation &

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1 Tactics as Related to Public Reassurance Concerning
2 the Smoking Habit;" right?
3 A. Uh-huh.
4 Q. You have to answer out loud, sir.
5 A. I'm sorry, yes, that -- that is the title.
6 Q. All right. And if we turn to the next page
7 under that point four, we see, "First," there's a
8 heading "Associated Companies;" right?
9 A. Yes, that's correct.
10 Q. Then there's a second heading, "Millbank."
11 A. Yes.
12 Q. And then under that, under the "Millbank"
13 heading it says, "Advice and information on all
14 worthwhile programmes and case histories which have
15 been developed and used by the major companies.
16 These would include activities aimed to secure
17 public/consumer reassurance, employee confidence and
18 good trade relations;" right?
19 A. Those are the words he used, yes.
20 Q. All right. And it also goes on to talk about
21 illustrating the benefits of smoking; right?
22 A. Uh-huh. I'm sorry. Yes, that's right.
23 Q. All right. Now if we turn back to the page that
24 ends with Bates number 082, it talks about
25 advertising for low delivery or traditional brands;

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1 right?

2 A. Could you show me where you're referring to

3 there?

4 Q. Yes, right under the heading "Communication" at

5 the top of the page, sir.

6 A. Uh-huh.

7 Q. Do you see there it says, "Furthermore,

8 advertising for low delivery or traditional brands

9 should be constructed in ways so as not to provoke

10 anxiety about health, but to alleviate it, and enable

11 the smoker to feel assured about the habit and

12 confident in maintaining it over time?"

13 A. Those again are the words he used.

14 Q. All right. And finally, sir, if we turn to the

15 second-to-the-last page of the document, there's a

16 description of tactics to be used in attaining the

17 objectives; right?

18 A. Second-to-last. I'm sorry. Where are you --

19 Oh, yes, there is a heading "B. TACTICS."

20 Q. And it says immediately thereunder, "The main

21 objective for all tactics on publicity is directed

22 towards achieving reassurance among a variety of

23 'publics', including smokers particularly, in the

24 face of the increasing social unacceptability of

25 smoking;" right?

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- 1 A. Those again are the words he used.
- 2 Q. And as a matter of fact, when it makes reference
- 3 to the tactic of achieving reassurance among the
- 4 variety of public, including smokers, "reassurance"
- 5 is underlined; right?
- 6 A. In those words you've quoted, that's the case.
- 7 Yes, it is.
- 8 Q. All right. Now sir, you're a --
- 9 Have you reviewed Brown & Williamson's early
- 10 marketing for its cigarettes?
- 11 A. In detail? No. But I have tried to understand
- 12 how our marketing of cigarettes has evolved over the
- 13 years.
- 14 Q. All right. You are aware that in the early
- 15 period from 1930s, say, to 19 -- mid-1970s, Brown &
- 16 Williamson advertising for Viceroy aimed at trying to
- 17 reassure smokers about health risks associated with
- 18 smoking?
- 19 A. I'm not directly aware of that, no.
- 20 Q. Sir, showing you what's previously been marked
- 21 as Plaintiffs' Exhibit 4422, this is a document
- 22 entitled "VICEROY Advertising Objectives and Creative
- 23 Strategies," written by E. A. Willets and dated July
- 24 19th, 1976; right?
- 25 A. Well the heading actually goes on to say 1936

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1 through '75, which probably was what you were
2 referencing in your earlier question.

3 Q. All right. But I --

4 I did identify the document correctly; didn't I,
5 sir?

6 A. I believe you did, yes.

7 Q. And Exhibit 4422, for the record, begins with
8 Bates number 464306780; right?

9 A. Yes, that's correct.

10 Q. All right. Would you look at the --

11 Just generally page through the document to
12 answer the question if this document sets forth the
13 chronology of Viceroy advertising objectives and
14 strategies for the period -- the period 1936 to 1975.

15 A. Are you asking me whether this accurately does
16 it, or whether that is what it purports to do?

17 Q. Well that's what it purports to be; right?

18 A. It appears to. It talks about the background
19 pre-1942 and then '42 through '46, '46 through '49,
20 et cetera.

21 Q. All right. And you have no information which
22 would contradict what's stated here; would you, sir?

23 A. Not one way or the other, no.

24 Q. All right. Let's take a look at the first page
25 where it says "Background - Pre 1942."

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1 A. Uh-huh.

2 Q. There under "OBJECTIVE AND CREATIVE STRATEGY" it
3 says, "Attract smokers of creative -- of" -- strike
4 that.

5 There under the heading "OBJECTIVE AND CREATIVE
6 STRATEGY" it says, "Attract smokers of competitive
7 non-filter brands by promising clean -- mild, clean
8 smoke and health benefits because of filter." Right?

9 A. Yes.

10 Q. All right. And sir, have you reviewed Viceroy
11 strategy for that period to determine whether indeed
12 the ads did suggest health benefits because of
13 Viceroy's filter?

14 A. I don't believe we --

15 I think this inaccurately reflects the campaign
16 for Viceroy as far as I know, but clearly it was,
17 despite the fact that Reynolds claimed that Winston
18 was the first filter brand, I think it was in the
19 U.S. market, Viceroy was the first acetate filter
20 brand, and I imagine that was a -- a product plus
21 that was strongly featured in the advertising.

22 Q. All right. Sir, would you look at the page that
23 ends with Bates number 782.

24 A. Yeah.

25 Q. There it says "1950 - 3rd Quarter 1952," in

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1 other words, this discusses the strategy for that
2 period of time; right?

3 A. It appears to be that's the case, yes.

4 Q. And under "OBJECTIVE AND CREATIVE STRATEGY" it
5 says, "Attract smokers of competitive non-filter
6 cigarettes by promising health benefits, supported by
7 published research by independent body, because of
8 VICEROY's filter;" right?

9 A. Those are again what the words say.

10 Q. All right. Now sir, there is an evaluation of
11 this strategy, if we turn to the page that ends with
12 Bates number 783. Do you see it?

13 A. This is then the evaluation of the strategy '53
14 through '54, I believe. Is that what you're
15 referring me to?

16 Q. Yes, sir.

17 A. Okay.

18 Q. And it says under "EVALUATION:
19 "These two products -- product changes firmly
20 positioned VICEROY as a high-filtration, healthier
21 cigarette and attracted smokers in droves." Right?

22 A. Again that's what the words say.

23 Q. And as a matter of fact, you understand that
24 Viceroy was in a position as a result during this
25 period of being unavailable; right?

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1 A. Again it says demand was so high that it
2 couldn't fully be met, so it was certainly very
3 popular and it was an introduction that obviously was
4 successful with the consumers.

5 Q. All right. Sir, we're about ready to stop for
6 the day, but before we do, there are a couple of
7 issues that I would like to go back to.

8 First of all, there were some questions that I
9 asked you that you didn't know the answer to and you
10 volunteered to find out. Would you try and do that
11 so you could report back tomorrow?

12 A. If my counsel has a recollection of all the
13 issues that I volunteered to find out more
14 information about, I'll certainly endeavor to do so.
15 But we're close to the close of business, of course,
16 so it may be difficult. But I'll try.

17 Q. The other thing is I asked you early in the
18 deposition about the net worth of Brown & Williamson,
19 and I think you answered with an answer that dealt
20 with profits.

21 A. That's right.

22 Q. Do you recall that?

23 A. I do, yes.

24 Q. All right. What is the net worth of Brown &
25 Williamson today?

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1 A. I would have to, again, consult with my chief
2 financial officer, as I indicated earlier, and -- to
3 get you a suggested figure, but we don't publish
4 independent accounts for Brown & Williamson, and
5 therefore I think even my chief financial officer
6 might have some difficulty in calculating net worth.
7 It would probably end up being an estimate, and I'm
8 not sure, being a technical man, he'd be happy to do
9 that. But I'll certainly ask him the question.

10 Q. All right. Sir, one other -- or a couple of
11 other questions along that line.

12 If we were to try and find out the information
13 about Brown & Williamson's assets, net worth and so
14 forth, we wouldn't be able to go to an annual report;
15 would we?

16 A. Well we produce an annual review which talks
17 about trading profit, which is what I just mentioned
18 in response to your question, but we don't
19 independently publish audits of account of Brown &
20 Williamson to the public, no.

21 Q. And just so we're clear, that review you just
22 talked about, that's a private document.

23 A. No, no. The document --

24 If you walk into Brown & Williamson, we'd be
25 happy to hand you a copy.

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1 Q. Could you bring one tomorrow?

2 A. I don't know whether I can get one by 8:30
3 tomorrow morning, but we might be able to send over
4 for one for you.

5 Q. Has there been a time in the last five years
6 when Brown & Williamson's liabilities were greater
7 than their assets?

8 A. I'm sorry. Could you say that again?

9 Q. Has there been a period in the last five years
10 where Brown & Williamson was in a negative-net-worth
11 situation?

12 A. Brown & Williamson Tobacco Corporation?

13 Q. Yes, sir.

14 A. I'm not sure. I wouldn't say so, no.

15 Q. Well sir, isn't it --

16 Didn't Brown & Williamson receive an infusion of
17 cash from B.A.T Industries?

18 A. There was a --

19 MR. McLAUGHLIN: Object to form.

20 A. There was a capital injection, I think, made by
21 our shareholders, whether it was from our immediate
22 shareholder or, you know, where in -- up the chain
23 the funds came from I can't recall, but, yes, I think
24 we did have a capital injection some three years
25 ago. Again, it predated my arrival here, and I'd

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1 have to take notice of that question to give you an
2 accurate response.

3 Q. Why do you understand that this injection of
4 capital was required?

5 A. I don't have a complete understanding of that.

6 Q. Well what --

7 What's your general understanding, sir?

8 A. I wouldn't want to speculate. I wouldn't want
9 to speculate. I could probably be better informed
10 about that in the morning.

11 Q. All right. Did it have something to do with the
12 purchase of Farmers Insurance?

13 A. Farmers Insurance of California was purchased
14 here in the U.S. and at the time was a subsidiary, of
15 course, of -- was a subsidiary, I believe, of --

16 Let me think. Which company was it? Again, I'm
17 not sufficiently familiar with that really to be able
18 to give you an accurate answer, but if you directly
19 specify what the question is, again, I'll see if I
20 can be better informed in the morning.

21 Q. Well I would like to know whether the infusion
22 of capital that you mentioned a moment or two ago had
23 anything to do with the purchase of Farmers Insurance
24 of California.

25 A. I see. That's the question.

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1 Q. Well that's one of the questions.

2 A. You have more questions?

3 MS. WIVELL: All right. Why don't we stop
4 for the day.

5 THE REPORTER: Off the record, please.

6 (Deposition recessed at 5:27 o'clock p.m.)

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STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of NICHOLAS G. BROOKES at the time and place
6 aforesaid; and that the foregoing transcript
7 consisting of pages 1 through 280 is a true and
8 correct, full and complete transcription of said
9 shorthand notes, to the best of my ability.

10 Dated at Louisville, Kentucky, this 5th day
11 of November, 1997.

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15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 C E R T I F I C A T E

2 I, NICHOLAS G. BROOKES, the deponent,
3 hereby certify that I have read the foregoing
4 transcript consisting of pages 1 through 280, and
5 that said transcript is a true and correct, full and
6 complete transcription of my deposition except:

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15 NICHOLAS G. BROOKES

16 Deponent

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18 Sworn and subscribed to before me this day
19 of , 1997.

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23 Notary Public

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25 My commission expires .

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953